

March 13, 2024

The Honorable Susan Humphries, Chairperson
House Committee on Judiciary
300 SW 10th Avenue, Room 582-N
Topeka, Kansas 66612

Dear Representative Humphries:

SUBJECT: Fiscal Note for HB 2767 by House Committee on Energy, Utilities and Telecommunications

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2767 is respectfully submitted to your committee.

Under current law, a service of an order or notice under the Administrative Procedures Act is considered complete upon mailing. HB 2767 would consider the service of an order or notice to be completed upon confirmation of receipt by the intended recipient. The bill would require documentation of the date, time, and place of an in-person service on a written certificate of service; a reply to service by electronic means; a certified mail receipt; or the date, time, and place of service by a professional process server.

As the bill would affect a wide range of agencies, the Division of the Budget has reached out to a sample of state agencies to determine a fiscal effect. The fiscal effect for each agency included in the sample is provided below. The fiscal effect is not comprehensive, and enactment of the bill could result in additional expenditures for state agencies not included in this fiscal note.

The Office of Administrative Hearings (OAH) indicates enactment of the bill would increase expenditures to the agency beginning in FY 2025 as it would alter the method by which it serves orders and notices on individuals and entities. Because OAH is funded by fees paid by other state agencies, the Office indicates that enactment of the bill could increase fees to other state agencies to cover the costs of the provisions of the bill. In calculating a possible fiscal effect, OAH first analyzed the number of cases that are handled each year and how many of those cases result in the issuance of a notice or order that affirms an agency action imposing a fine or penalty. Utilizing an average, OAH determined that approximately 97.0 of the cases OAH handles each

year would likely result in a fine or penalty being imposed. This percentage was then applied to the forecasted number of cases to be closed in FY 2025 and FY 2026, resulting in approximately 3,104 instances in FY 2025 and 3,250 instances in FY 2026. These estimates assume that only one order or notice is issued by OAH in each case that is closed, which is not always accurate. The Office used these estimates to calculate the fiscal effect of the four different methods of acceptable service listed in the bill. The fiscal effect of each method is outlined below.

For in-person service, OAH would need to hire additional staff throughout the state to be able to serve orders and notices. The Office estimates it would need \$230,900 beginning in FY 2025 to hire 4.00 FTE to adequately cover the entire state to effectuate service in a timely manner. This estimate includes \$40,000 for each position's salary, \$12,725 for each positions' benefits, and \$5,000 for each position's technology costs. While most of the additional FTE positions would be able to work remotely, particularly those located outside of the Topeka area, OAH would still be required to reimburse for mileage and office space. The Office states it is possible that some staff could be hired on a part-time basis and paid as needed, but that such positions could produce recruitment and retention issues in the northwest or southwest areas of the state. In addition, OAH indicates its decisions are not rendered all at one time and can be time sensitive. Therefore, in-person servicing could result in multiple trips in one day in order to process all orders and notices that must be served on a given day. The Office estimates the mileage reimbursements would total \$54,894 for 83,808 miles in FY 2025 and \$57,476 for 87,750 miles in FY 2026. In total, the cost for in-person service would be \$285,794 in FY 2025 and \$288,376 in FY 2026.

For a reply to service by electronic means, OAH states that if it can utilize the e-filing system in a way that it could obtain a "read receipt" or some notice that the individual or entity received the electronic notification, the fiscal effect would be significantly lower. OAH indicates that the e-file system would need to undergo major changes so it could electronically monitor that someone has received the emailed notification by the system producing a read receipt. If an automatic read receipt is insufficient and OAH would have to wait for an electronic reply from the recipient, OAH states an alternative would need to be considered. OAH also notes that this method would only work on a portion of the cases it handles, as many individuals and entities do not use the OAH e-filing system. OAH estimates that the costs to add read receipt functionality to the e-filing system would be approximately \$100,000. This expense would be incurred in FY 2025, with approximately \$15,000 each following year for maintenance fees.

For service by certified mail, OAH states that this method would cost approximately \$11 per package. Therefore, using certified mail to serve each order and notice would cost approximately \$34,144 in FY 2025 and \$35,750 in FY 2026.

For in-person professional process serving, the Office states that the concerns regarding the in-person services provided by OAH staff are the same. Multiple trips per day could be required, availability of professional services could be insufficient in certain areas of the state, and costs would be significantly higher than other options. OAH estimates that process servers would cost approximately \$107 per instance, making the cost to utilize a professional process server for all OAH orders approximately \$332,128 in FY 2025 and \$347,750 in FY 2026.

The costs estimated above assume one form of service would be utilized. However, the Office would utilize a combination of three of the four options (electronic reply, certified mail, and process servers). OAH would utilize the e-file system for approximately 30.0 percent of all the orders and notices at a cost of \$100,000 in FY 2025 and \$15,000 in FY 2026 to build the functionality in the e-file system. OAH would then utilize certified mail for the remaining 70.0 percent at a cost of \$23,903 in FY 2025 (2,173 services X \$11) and \$25,025 in FY 2026 (2,275 services X \$11). However, the Office estimates approximately 5.0 percent of entities and individuals that would either not respond to electronic service or fail or refuse to accept service by certified mail. For those cases, OAH would rely on a professional process server rather than maintain staff throughout the state for those entities or individuals. The cost to utilize process servers on 5.0 percent of cases would total \$16,585 in FY 2025 (155 services X \$107) and \$17,441 in FY 2026 (163 services X \$107). Regardless of which method OAH utilizes, it states that it will need to hire at least 1.00 FTE position to assist in monitoring the services, especially considering the date of service dictates when an individual or entity's appeal rights begin. The Office would require \$69,935 beginning in FY 2025 for the additional position. Of this amount, \$50,000 would be for the base salary, \$14,935 would be for benefits, and \$5,000 would be for technology costs. In total, the Office estimates enactment of the bill would increase expenditures by \$210,423 in FY 2025 (\$100,000 for the e-file system functionality, \$23,903 for certified mail, \$16,585 for process servers, and \$69,935 for an additional position) and \$127,401 in FY 2026 (\$15,000 for the e-file system maintenance, \$25,025 for certified mail, \$17,441 for process servers, and \$69,935 for an additional position). The Office notes that the estimates would fluctuate based on caseloads.

The Department for Aging and Disability Services indicates enactment of the bill would increase expenditures by \$48,000 beginning in FY 2025. The Department estimates it would need to utilize a process server for approximately 240 orders or notices at an approximate cost of \$200 per process server for a total of \$48,000. The Department states that it serves notices and orders to individuals to every available address on file. If a person cannot be located, the Department retains an investigator and may use a process server for cases in which individuals have moved and not kept an updated address or refuse to pick up certified mail. The Department notes it does not collect email addresses of individuals until an appeal is filed.

The Department of Health and Environment indicates enactment of the bill would increase expenditures by \$1,500 to send approximately 100 additional orders per year through certified mail. The Department currently issues approximately 400 orders per year, 75.0 percent of which are already sent through certified mail. The Department estimates the total cost of sending the remaining 100 orders through certified mail would be \$15 per order (100 orders X \$15). The Department would handle this expense through existing resources. However, the Department states that it is not certain if license and permit fees would be considered fines and penalties under the provisions of the bill. If such licenses and permits were to be considered fines and penalties, the Department states its expenditures would increase significantly.

The Kansas Corporation Commission (KCC) indicates enactment of the bill would increase expenditures by \$415,938 beginning in FY 2025. KCC indicates it would have to send 1,250 penalty orders and notices of violations by certified mail at a cost of \$4.40 per order/notice for a total cost of \$5,500. It would also send 976 penalty orders and notices of violations utilizing a

process server at an approximate cost of \$150 per order/notice for a total cost of \$146,400. It would also send 5,736 roadside inspection penalty invoices for the Kansas Highway Patrol through certified mail at a cost of \$4.40 per invoice for a total cost of \$25,238. The agency would also send 1,592 roadside inspection penalty invoices utilizing a process server at a cost of \$150 per invoice for a total cost of \$238,800. The agency would also hire an additional FTE position to handle the workload. In total, KCC reports the fiscal effect to the agency would be at least \$415,938 beginning in FY 2025 ($\$5,500 + \$146,400 + \$25,238 + \$238,800$).

The Board of Pharmacy indicates enactment of the bill would require it to send its disciplinary actions through certified mail. The Board states that hiring a process server or creating an in-person service function would be cost prohibitive and electronic notification would have a lower likelihood of response. The Board serves an average of 506 disciplinary actions per year, and estimated certified mail would cost \$8.79 per instance, which would total \$4,448 for this method ($\8.79×506). The Board also states it would need to hire 0.25 FTE for administrative staff to accommodate the new responsibilities, including mailing, tracking, and documentation, at a cost of approximately \$12,187 beginning in FY 2025. In total, the cost to the Board of Pharmacy would be \$16,635 beginning in FY 2025.

The Board of Emergency Medical Services indicates enactment of the bill would increase expenditures up to \$18,000 beginning in FY 2025. The Board anticipates sending approximately 200 orders annually, half to businesses and half to licensees. If all orders were sent through certified mail, the agency estimates costs would total approximately \$1,400. However, if approximately half of the orders sent through certified mail require follow-up process serving, the agency estimates total expenditures could increase to \$18,000. The agency notes that certain process server fees in Kansas range from \$55 to \$135 based on geographic boundaries.

The Board of Nursing states that enactment of the bill would increase expenditures to the agency to issue orders through certified mail. The Board is unable to provide a precise fiscal effect but reports that it has sent 82 orders in the first three quarters of FY 2024. If the same orders were sent through certified mail, the Board would have incurred at least \$700 in additional expenses in the first three quarters of FY 2024. The Board notes that it is not uncommon that the licensee has not provided the correct address, so some orders may not be deliverable via mail.

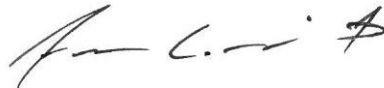
The Board of Healing Arts states that enactment of the bill would increase expenditures for the agency, but a precise fiscal effect cannot be estimated. The agency states that expenditures could range between \$2,000 and \$3,000 from fee funds beginning in FY 2025 for communications via certified mail for litigation cases. However, if the agency is required to use a process server, expenditures would increase significantly. The provisions of the bill could also increase the staff time required to send the documents.

The Insurance Department states enactment of the bill would increase expenditures to the agency by approximately \$5,000 beginning in FY 2025 to send between 500 and 600 notices of penalties or fines. The Department states it levied at least 536 penalties or fines in 2023.

The Department of Revenue notes that the bill would conflict with the current notification process for the restriction, suspension, or revocation of driving privileges. The Department states that enactment of the bill could reduce the amount of fines and penalties the agency collects because it would be required to obtain proof of receipt before it could impose any fine or penalty. However, a precise fiscal effect cannot be estimated.

The Kansas Public Employee Retirement System, the Department of Labor, the Department for Children and Families, the Office of the Attorney General, and the Office of Judicial Administration indicate enactment of the bill would not a fiscal effect on the agencies. Any fiscal effect associated with HB 2767 is not reflected in *The FY 2025 Governor's Budget Report*.

Sincerely,



Adam C. Proffitt
Director of the Budget

cc: Matt Spurgin, Office of Administrative Hearings
Kim Holter, Department for Children & Families
Amy Penrod, Department of Health & Environment
Leigh Keck, Department for Aging & Disability Services
William Hendrix, Office of the Attorney General
Dawn Palmberg, Department of Labor
Bobbi Mariani, Insurance Department
Peter Barstad, Kansas Corporation Commission
Susan Gile, Board of Healing Arts
Jill Simons, Board of Nursing
Alexandra Blasi, Board of Pharmacy
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Larry Karns, Board of Technical Professions
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