

Proponent Testimony before the Senate Ways and Means Committee re: HB 2087

March 24, 2021

Chair and Honorable Committee Members,

The Kansas State Board of Healing Arts (“Board”) submits this testimony to support the goals of HB2087 and suggest an additional amendment for legislative consideration either as an amendment for this bill or for future reference.

Recently, legislators have expressed an increasing desire to reduce the number and complexity of regulations and ensure that regulations are updated regularly. The suggested amendment below is an additional step the legislature could take to make it easier for state agencies and boards to *efficiently* eliminate regulations when they become obsolete or are otherwise deemed to be either no longer necessary or unnecessarily burdensome.

The regulation process is widely misunderstood by both the public and many legislators. Most specifically, there are two general points that deserve emphasis:

1. The process for implementing or revising regulations is much more involved, labor intensive, and thorough (sometimes excessively so) than many legislators realize. Much of this process could be improved and made more efficient. Please **see attached outline of the current regulation promulgation process**. HB 2087 contains steps that could improve the efficiency of the process.
2. Currently, an agency must complete all steps of the lengthy process described in the attached outline even if the agency is seeking to delete or substantively reduce an existing regulation. The amendment referenced below seeks to create a “fast path” that would allow agencies to delete or substantively reduce regulations in a faster and more efficient manner.

Below is an example of a statutory revision that could make it more efficient for agencies to revoke or reduce existing regulations. It would allow agencies to skip several of the procedural steps involved in the **attached** promulgation process when the agency is seeking to eliminate or substantively reduce a regulation. The following could be inserted as new subsection (a)(5) of [K.S.A. 77-421](#):

“(5) When a state agency seeks to revoke or substantially reduce an existing rule or regulation, such revocation or amendment shall not be subject to the requirements of

K.S.A. 77-416, K.S.A. 77-420, or the approvals described in subsection (a)(1) of this section. Such revocation or amendment shall otherwise be subject to the requirements of this section. When a state agency proposes an amendment that substantially reduces an existing regulation the agency head shall include in the notice described in subsection (a)(1) of this section that the amendment substantially reduces the existing regulation. If, during the 60 day notice period described in subsection (a)(1) of this section, the chair of the joint committee on administrative rules and regulations notifies the agency head that the chair desires further review of whether the proposed amendment substantially reduces the regulation, the proposed amendment shall be subject to all requirements of K.S.A. 77-416, K.S.A. 77-420, and the approvals described in subsection (a)(1) of this section. A state agency that complies with this subsection may revoke or substantially reduce an existing rule or regulation notwithstanding any other provision of law.”

The first four sentences address the lengthy “triple stamping” process by which DOB, DOA, and AG all must approve a proposed regulation/amendment prior to even beginning the JCARR and public notice/hearing process. This would allow agencies to skip those processes (only when eliminating or reducing a regulation), but agencies would still be required to provide public notice and notice to JCARR, and provide a public hearing about the revocation/amendment. Also, the fourth sentence preserves legislative oversight by allowing JCARR to make agencies go through all the normal promulgation processes and approvals if JCARR doubts that the proposed amendment substantively reduces the regulation.

Thank you for considering this testimony. I welcome any comments, questions, or further dialogue with members of the committee. Please feel free to contact me any time by phone or via email at tucker.poling@ks.gov.

Sincerely,



Tucker L. Poling
Executive Director

REGULATION PROMULGATION PROCESS

The current promulgation process (K.S.A. 77-416 to 426) requires, for each regulation and any revision to a regulation, approval by at least 3 separate state agencies and the Attorney General, at least 4 separate open hearings, and at least two public notice publications, over a period of (at least) several months during which both the public and legislature has notice of the proposed regulation/revision.

All regulations are derived from statutory authority granted by the legislature. Many are mandated by the legislature.

The current process for deleting, changing, or adding any regulation requires at least the following:

1. Initial process of developing proposed regulation or deletion/revision of regulation, which will involve discussion(s) at open meetings of the relevant agency/board.*
2. Drafting an expanded economic impact statement (“EIS”) required by K.S.A. 77-416 (as amended in 2018).
 - *NOTE:* Most agencies (some of which have only a handful of employees) do not employ an economist.
3. Approval process for draft regulation and EIS by the Division of Budget.
4. After approval from DOB, approval process by the Department of Administration.
 - If DOA requests any revisions, entire process must start again.
5. After approval from both DOB and DOA, then approval process by Attorney General.
 - If AG does not approve, entire process starts again, with re-review and re-approval by both the DOB and DOA.
6. Publish public notice* and a copy of the proposed revised regulation through the Secretary of State.
7. **After at least 60 days following the public notice** published by the SOS, a hearing before the legislature’s Joint Committee on Rules and Regulations (JCARR) occurs.

**NOTE:* The legislature can pass legislation to eliminate the authority for the regulation at any time, before or after it becomes effective.

8. Legislature's JCARR committee sends memo to agency with comments/concerns about regulation.
9. Agency must respond in writing to the memo/letter in response to each comment/concern raised by JCARR.
10. After the legislature's JCARR process is complete, hold (another) public hearing on the proposed regulation, in which the JCARR comments and all public comments are included in the hearing record.
11. **After the JCARR hearing and the public hearing, hold another open meeting** to consider adoption of regulation.
12. Publish regulation and notice of adoption in the Register.*

NOTE: The current legal standard for court review of our regulations is defined under the Kansas Judicial Review Act ("KJRA"), and it **allows any regulation to be challenged and overruled if it is found to be unreasonable**. See KSA 77-602(b)(1); 77-602(i) 77-611(c); 77-613(a); 77-621(c)(8); 77-622(b). Therefore, **regulations are not only subject to constant jurisdiction and oversight by the legislature, they are also subject to judicial oversight for reasonableness**.