

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2087

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2087, as amended, would amend 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 \$3,000,000 over two years; and an estimate of such costs expressed as a single dollar figure.

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 \$3,000,000 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

*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>

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 \$3,000,000 over two years. 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 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.

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 the year 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 \$3,000,000 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 the year 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. 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 statement of most rules and regulations submitted included 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 representatives of the Biofuels Association, Kansas Cooperative Council, Kansas Grain & Feed Association, and the Kansas Secretary of State.

No **opponent** testimony was provided to the Committee.

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

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 that 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 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 that the bill would not change the agency's review process and would have no fiscal effect.

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