

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 34**

As Amended by House Committee on Federal
and State Affairs

Brief*

Sub. for SB 34, as amended, would require all rules and regulations adopted under the Rules and Regulations Filing Act (Filing Act) to be reviewed by agencies every five years, would establish reporting requirements for agencies, and would establish an alternative revocation procedure for certain rules and regulations.

The bill would also make technical changes.

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

Reporting Requirements

The bill would require each state agency that has adopted rules and regulations to submit a report to the Joint Committee on Administrative Rules and Regulations (JCARR) on or before July 15 of the year specified in the bill for the agency. The report would be required to 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 if it may be revoked

*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>

subject to the alternative revocation procedure the bill would create.

Reporting Years

The bill would specify 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, Agency Numbers 1 through 23;
- For 2024 and every fifth year thereafter, Agency Numbers 24 through 51;
- For 2025 and every fifth year thereafter, Agency Numbers 53 through 82;
- For 2026 and every fifth year thereafter, Agency Numbers 84 through 107; and
- For 2027 and every fifth year thereafter, Agency 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 would require 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 Filing Act

The bill would state that rules and regulations may only be adopted or maintained by an agency 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 would be part of and supplemental to the Filing Act.

Alternative Revocation Procedure

The bill would amend 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 Secretary of State (Secretary) and having the notice published in the *Kansas Register*. The notice of revocation would be prohibited 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 would be 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 existing law; and
- Submit the notice of revocation to JCARR, and appear before the Committee at a hearing on the proposed revocation, if one is requested by the chairperson.

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

The bill would also amend the Filing Act to except rules and regulations revoked under the alternative revocation procedure from the JCARR review requirements required by existing law.

Background

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Hilderbrand.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, Senator Hilderbrand and representatives from Americans for Prosperity and the Kansas Chamber of Commerce provided **proponent** testimony. The proponents indicated that the bill would increase legislative oversight, would require each rule and regulation to have a definable benefit, and would reduce burdensome regulations.

A representative of United WE provided written-only proponent testimony.

Representatives of the Kansas Department of Wildlife and Parks, the Kansas State Board of Healing Arts, the Kansas State Board of Pharmacy, and the Office of the Secretary of State provided neutral testimony, indicating the bill is has a well-intentioned goal of increasing transparency, but would create logistical and fiscal concerns for the agencies.

Representatives of the Kansas State Board of Nursing and the League of Kansas Municipalities provided written-only neutral testimony.

Opponent testimony was provided by representatives of the Kansas Commission on Peace Officers' Standards and

Training, the Kansas Livestock Association, and the Kansas State Board of Technical Professions. The opponents indicated that enactment of the bill would have a burdensome impact on law enforcement certification, could result in good regulations sunseting, and that the process should be left to the rulemaking bodies already created by the Legislature.

Representatives of the American Institute for Architects and the Kansas Farm Bureau provided written-only opponent testimony.

The Senate Committee removed the original contents of SB 34, which would have sunset any administrative rules and regulations five years after adoption, unless extended by the legislature; inserted substitute language into the bill; and recommended a substitute bill be passed.

House Committee on Federal and State Affairs

In the House Committee hearing, **proponent** testimony was provided by representatives of Americans for Prosperity, the Kansas Agribusiness Retailers Association, Kansas Chamber of Commerce, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association. The proponents stated the substitute bill addresses concerns raised with the initial bill about potential unwanted sunseting of necessary regulations, and that the bill allows for expedited repeal of regulations an agency finds to be no longer necessary. Written-only proponent testimony was provided by representatives of the Kansas Cooperative Council and Kansas Livestock Association.

Written-only neutral testimony was provided by representatives of the Kansas Behavioral Sciences Regulatory Board and the Mercatus Center.

A representative of the Kansas Department of Health and Environment (KDHE) provided **opponent** testimony,

stating the bill is unclear on its scope and could require KDHE to hire between 20 to 53 FTE positions to comply with the bill.

The House Committee amended the bill to be effective upon publication in the *Kansas Register*.

Fiscal Information

According to fiscal information provided to the Chairperson of the Senate Committee on the substitute bill, agencies do not anticipate enactment of the bill would have a significant fiscal effect on state agencies.

Administrative rules and regulations; joint committee; review of rules and regulations; reporting requirements