

January 26, 2021

The Honorable Larry Alley, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senator Alley:

SUBJECT: Fiscal Note for SB 34 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 34 is respectfully submitted to your committee.

SB 34 would have all rules and regulations adopted by state agencies in existence on July 1, 2021, expire five years after that date. In addition, any new rule or regulation or substantial amendment of an existing rule or regulation would expire on July 1 of the fifth year after the enactment, unless the Legislature takes action to renew the rule or regulation.

By July 15, in the year before the expiration of a rule or regulation, the Revisor of Statutes would be required to certify the language and citation of each rule and regulation that will expire in the following year to the President of the Senate and the Speaker of the House of Representatives. Any rule and regulation that is not identified and certified would not be subject to Legislative review and would not expire. If the Revisor would fail to certify a rule and regulation, but subsequently determines that the rule and regulation should have been certified, the Revisor would be required to make the certification in the year following that determination.

Since SB 34 would not change any process for rules and regulations until all rules and regulations would expire on July 1, 2026, the Division of the Budget estimates that the enactment of SB 34 would likely not have a fiscal effect for most agencies in FY 2021 or FY 2022. Agencies would likely begin the process of reviewing all applicable rules and regulations and how the expiration date would affect the agency; however, the timing of this review would vary among state agencies. For those that have few rules and regulations, it is likely that the fiscal effect would be negligible. However, for agencies with many rules and regulations, the fiscal effect could be substantial. For reference, the Secretary of State reports that as of December 31, 2020, there are 9,325 active rules and regulations enacted by state agencies. The Division of the Budget contacted a sample of state agencies for a fiscal effect response to SB 34 and the responses from these agencies are summarized below.

Office of the Attorney General—The agency estimates that within five years, it would need outside counsel for the additional workload of reviewing all rules and regulations that would be subject to expiration. The agency notes that there would be a chance that the constitutionality of the bill would be challenged. In the event of a challenge, the agency would hire outside counsel to represent one side of the litigation, as the two state entities would be on opposing sides of the litigation. The agency estimates the cost of outside counsel would be between \$250,000 and \$300,000 from the State General Fund, which is based on the cost of outside counsel hired for similar litigation in recent years.

Department of Administration—The agency estimates that staff review time for administrative rules and regulations would increase starting in the fourth year after the enactment of SB 34; however, the fiscal effect was not estimated by the agency.

Secretary of State—The Secretary of State indicates the bill would require an additional 1.00 FTE positions costing \$60,000 for FY 2021 and 2.00 FTE positions costing \$110,000, along with other operating expenditures of \$13,000, for a total expenditure increase of \$123,000 for FY 2022.

In addition, the Division of the Budget notes that the Secretary of State's fee fund associated with the publication of the Kansas Register would experience an increase in revenues as a result of the additional publication of all agencies' rules and regulations; however, the additional amount of revenue by fiscal year would depend on the timing of the rules and regulations are published.

Department of Health and Environment—The agency states that it would require additional staffing of 35.00 to 53.00 FTE positions because of the five-year review period of all rules and regulations, totaling between \$2.1 to \$3.3 million from the State General Fund for FY 2021 and \$2.2 million to \$3.3 million for FY 2022. The additional staff would provide constant review, development, and support for agency regulations.

In addition, Kansas Medicaid would be affected by the bill. The agency notes that one of the contractual requirements for maintaining the Kansas Medicaid State Plan is for the Centers for Medicare and Medicaid Services (CMS) to review and approve Kansas Medicaid regulations and policies. Some of the Medicaid eligibility requirements are implemented through the rules and regulations process. Any Kansas Medicaid regulations not promulgated in a timely manner could affect CMS approval of the federal share of Kansas Medicaid expenditures.

It should also be noted that the Department has agreed to promulgate and maintain regulations acceptable to federal oversight agencies for programs in public health and environment. The Department's failure to effectively maintain the current regulations that have been approved by the federal government could lead to potential loss of federal funding.

Department of Wildlife, Parks and Tourism—The agency indicates the bill would not have a fiscal effect on the agency.

Department of Revenue—If a rule or regulation would expire unintentionally, the Department's ability and authority to interpret, implement, and enforce Kansas law would be diminished and compromised. The agency was unable to submit a fiscal note at the time of the request.

Department of Agriculture—If SB 34 was enacted, the agency would require an additional 1.00 FTE position for administrative and legal reviews of its rules and regulations at a cost of \$90,000 from the State General Fund, including base salary and fringe benefits.

Department of Education—The agency indicates that most of the rules and regulations for the State Board of Education would not be affected by the enactment of SB 34, as the agency has authority for these with Article 6, Section 2 of the Kansas Constitution. However, the agency does have some rules and regulations adopted outside of this constitutional authority. The Department indicates that it would require an additional 1.00 FTE Attorney position with associated expenditures which cannot be estimated.

Kansas Corporation Commission—The agency indicates that it would need an additional 1.50 FTE positions at a cost of \$97,500 for the proper reviewing of its rules and regulations.

Office of the State Bank Commissioner—The agency notes that its fees are set through the rules and regulations process. For example, within the Consumer and Mortgage Lending Division, its fees for credit service organizations and mortgage businesses are listed in regulation. If timely renewal of its regulations does not occur, the agency would lose authorization to collect \$1.1 million in fees which would affect its operations.

Behavioral Sciences Regulatory Board—The agency indicates the bill would likely increase annual expenditures to recertify rules and regulations; however, the agency is unable to estimate a fiscal effect.

Board of Healing Arts—The agency states that it would require additional staff to assess the revision or justification of expiring rules and regulations. Assuming one-fifth of the agency's regulations would go through the process every year, the agency would have to promulgate approximately 40 rules and regulations each year. Because the agency's staff is currently fully occupied with other duties, the agency estimates that it would require an additional 1.00 FTE position with a cost of \$16,690 for FY 2021 and \$66,762 for FY 2022 and each following year. These costs include base salary, fringe benefits, and other operating expenditures, all from the agency's fee fund.

Board of Nursing—The agency indicates that it would require an additional 1.00 FTE position totaling \$65,400, including base salary and other operating expenditures. As of FY 2021, the Board has 88 rules and regulations for the regulation of its licensees. The agency also notes that additional board meetings would likely be needed to review and approve rules and regulations that would expire; however, a cost estimate for these additional meetings is not available.

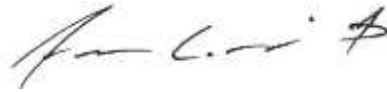
Board of Pharmacy—The agency states that it would require additional staff to assess the revision or justification of expiring rules and regulations. The agency has more than 108 pages of administrative regulations. Because the agency's staff is currently fully occupied with other duties, the agency estimates that it would require an additional 1.00 FTE position with a cost of \$75,400 for FY 2022 and each following year. These costs include base salary, fringe benefits, and other operating expenditures, all from the agency's fee fund.

Kansas Real Estate Commission—The agency notes that there would be additional costs to justify the need to the Legislature to renew an expiring regulation. However, the cost estimate for the additional requirements is not available.

Board of Technical Professions—The agency indicates that it would incur additional administrative costs to renew its regulations every five years. However, the cost estimate for the additional requirements is not available.

Board of Veterinary Examiners—The agency estimates that an additional 3.00 FTE positions would be required in approximately five years to review all of its 31 existing rules and regulations and estimates the cost to be approximately \$120,000 from the agency's fee fund. The cost estimate includes base salary, fringe benefits, and other operating expenditures. Any fiscal effect associated with SB 34 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,



Adam Proffitt
Director of the Budget

cc: Gordon Self, Revisor's Office
Willie Prescott, Office of the Attorney General
Jeff Scannell, Department of Administration
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