

HOUSE BILL No. 2744

By Committee on Appropriations

3-21

1 AN ACT enacting the Kansas sunset act; establishing the Kansas sunset
2 advisory commission; requiring the review and evaluation of state
3 agencies and offices.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) The provisions of sections 1 through 15, and
7 amendments thereto, shall be known and may be cited as the Kansas
8 sunset act.

9 (b) The provisions of sections 1 through 15, and amendments thereto,
10 shall expire on July 1, 2027.

11 Sec. 2. As used in sections 1 through 15, and amendments thereto:

12 (a) "Advisory committee" means a committee, council, commission
13 or other entity created under state law whose primary function is to advise
14 a state agency.

15 (b) "Commission" means the Kansas sunset advisory commission
16 established under section 3, and amendments thereto.

17 (c) "State agency" or "agency" means any state office, department,
18 board, commission, institution, bureau, advisory committee or any other
19 state authority.

20 Sec. 3. (a) There is hereby created the Kansas sunset advisory
21 commission within and as a part of the office of the state treasurer. The
22 commission shall consist of 11 members. The state treasurer shall be one
23 member and shall serve as chairperson. The remaining ten members shall
24 be appointed as follows:

25 (1) Two members appointed by the speaker of the house of
26 representatives who shall be members of the house of representatives and
27 one of whom shall be a member of the house committee on appropriations;

28 (2) one member appointed by the minority leader of the house of
29 representatives who shall be a member of the house of representatives;

30 (3) two members appointed by the president of the senate who shall
31 be members of the senate and one of whom shall be a member of the
32 senate committee on ways and means;

33 (4) one member appointed by the minority leader of the senate who
34 shall be a member of the senate;

35 (5) two members appointed by the state treasurer; and

36 (6) two members appointed by the governor.

1 (b) Members of the commission appointed under subsections (a)(1)
2 through (a)(4) shall serve at the pleasure of the appointing authority or
3 until such time as the member is no longer a member of such member's
4 respective legislative house. Members of the commission appointed under
5 subsections (a)(5) and (a)(6) shall serve for terms of four years that shall
6 expire on December 31 of the fourth year, except that the first member
7 appointed by the state treasurer and the first member appointed by the
8 governor shall serve for an initial term that expires on December 31, 2024.
9 Members of the commission appointed under subsections (a)(5) and (a)(6)
10 shall not be appointed for more than two consecutive terms. A member is
11 considered to have served a term if such member has served for more than
12 $\frac{1}{2}$ of a full term. Any vacancy in a membership of the commission shall be
13 filled by appointment in accordance with subsection (a) to serve the
14 unexpired term of the vacating member.

15 (c) Members of the commission appointed under subsections (a)(5)
16 and (a)(6) shall not be employees of any state agency and shall not have
17 held employment with any state agency for the five years immediately
18 preceding such member's appointment. The state treasurer and the
19 governor shall each appoint members who are not registered with the same
20 political party and who are not residents of the same county.

21 (d) The Kansas sunset advisory commission shall organize on or
22 before January 15 of each year and elect a vice chairperson in accordance
23 with this subsection. In odd-numbered years, the vice chairperson shall be
24 one of the members of the house of representatives, and in even-numbered
25 years, the vice chairperson shall be one of the members of the senate. The
26 vice chairperson shall exercise all of the powers of the chairperson in the
27 absence of the chairperson. If a vacancy occurs in the office of vice
28 chairperson, a member of the commission who is a member of the same
29 house as the member who vacated the office shall be elected by the
30 members of the commission to fill such vacancy.

31 (e) A quorum of the Kansas sunset advisory commission shall be six.
32 All actions of the commission shall be taken by a majority of all of the
33 members of the commission.

34 (f) The commission may meet at any time and at any place within the
35 state on the call of the chairperson.

36 (g) Members of the Kansas sunset advisory commission shall be paid
37 subsistence allowances, mileage and other expenses as provided in K.S.A.
38 75-3223, and amendments thereto. Members of the commission who are
39 members of the legislature shall also be paid compensation as provided in
40 K.S.A. 75-3212, and amendments thereto.

41 (h) The staff of the division of legislative post audit, the Kansas
42 department of legislative research and the Kansas division of the budget
43 shall provide such assistance to the commission as requested by the

1 commission.

2 Sec. 4. On or before January 1, 2023, the state treasurer shall adopt
3 rules and regulations necessary to implement and administer the provisions
4 of sections 1 through 15, and amendments thereto.

5 Sec. 5. (a) The commission shall:

6 (1) Review and take action necessary to verify the reports submitted
7 by the agency under section 9, and amendments thereto;

8 (2) consult with the division of legislative post audit, the Kansas
9 department of legislative research and the Kansas division of budget as
10 necessary in conducting any review required by this act;

11 (3) conduct such reviews and prepare and submit any written reports
12 on such reviews as required by this act; and

13 (4) review the implementation of any recommendations made by the
14 commission contained in reports presented to the legislature during the
15 preceding legislative session and any resulting legislation.

16 (b) The commission shall conduct one or more public hearings
17 concerning each review conducted by the commission. The commission
18 may hold such public hearings after the review required by this act is
19 complete and available to the public.

20 (c) The commission shall not discuss in a public hearing the
21 application of section 6(a)(14), and amendments thereto, to any agency.

22 Sec. 6. (a) The commission shall consider the following criteria in
23 determining whether a public need exists for the continuation of a state
24 agency or for the performance of the functions of the agency:

25 (1) The efficiency and effectiveness with which the agency operates;

26 (2) (A) an identification of the mission, goals and objectives intended
27 for the agency and of the problem or need that the agency was intended to
28 address; and

29 (B) the extent to which such mission, goals and objectives have been
30 achieved and the problem or need has been addressed;

31 (3) (A) an identification of any activities of the agency in addition to
32 those granted by statute and of the authority for those activities; and

33 (B) the extent to which those activities are needed;

34 (4) an assessment of authority of the agency relating to fees,
35 inspections, enforcement and penalties;

36 (5) whether less restrictive or alternative methods of performing any
37 function that the agency performs could adequately protect or provide
38 service to the public;

39 (6) the extent to which:

40 (A) The jurisdiction of the agency and the programs administered by
41 the agency overlap or duplicate those of other agencies;

42 (B) the agency coordinates with those agencies; and

43 (C) the programs administered by the agency can be consolidated

1 with the programs of other state agencies;

2 (7) the promptness and effectiveness with which the agency addresses
3 complaints concerning entities or other persons affected by the agency,
4 including an assessment of the agency's administrative hearings process;

5 (8) an assessment of the agency's process for adopting rules and
6 regulations and the extent to which the agency has encouraged
7 participation by the public in making such agency's rules and regulations
8 and decisions and the extent to which the public participation has resulted
9 in rules and regulations that benefit the public;

10 (9) the extent to which the agency has complied with:

11 (A) Federal and state laws and applicable rules and regulations
12 regarding equality of employment opportunity and the rights and privacy
13 of individuals; and

14 (B) state law and applicable rules and regulations of any state agency
15 regarding purchasing guidelines and programs for historically
16 underutilized businesses;

17 (10) the extent to which the agency issues and enforces rules and
18 regulations relating to potential conflicts of interest of agency employees;

19 (11) the extent to which the agency complies with the open records
20 act, K.S.A. 45-215 et seq., and amendments thereto, and follows records
21 management practices that enable the agency to respond efficiently to
22 requests for public information;

23 (12) the effect of federal intervention or loss of federal funds if the
24 agency is abolished;

25 (13) the extent to which the purpose and effectiveness of reporting
26 requirements imposed on the agency justifies the continuation of the
27 requirement; and

28 (14) an assessment of the agency's cybersecurity practices using
29 confidential information available from the Kansas state office of
30 information technology services or any other appropriate state agency.

31 (b) In an assessment of an agency that licenses an occupation or
32 profession, the commission and staff of the commission shall consider:

33 (1) Whether the occupational licensing program:

34 (A) Serves a meaningful, defined public interest; and

35 (B) provides the least restrictive form of regulation that will
36 adequately protect the public interest;

37 (2) the extent to which the regulatory objective of the occupational
38 licensing program may be achieved through market forces, private or
39 industry certification and accreditation programs or enforcement of other
40 law;

41 (3) the extent to which licensing criteria, if applicable, ensure that
42 applicants have occupational skill sets or competencies that correlate with
43 a public interest and the impact that those criteria have on applicants,

1 particularly those with moderate or low incomes, seeking to enter the
2 occupation or profession; and

3 (4) the impact of the regulation, including the extent to which the
4 program stimulates or restricts competition and affects consumer choice
5 and the cost of services.

6 (c) As part of the commission's review of an agency that licenses an
7 occupation or profession, the commission shall determine whether the
8 governing body of the agency being reviewed has made an evaluation
9 regarding the type of personal information of license holders that the
10 agency should make available on the agency's website based on the
11 following factors:

12 (1) The type of information the public needs to:

13 (A) File a complaint with the agency;

14 (B) locate an existing or potential service provider; and

15 (C) verify a license; and

16 (2) whether making the information available on the agency's website
17 could subject a license holder to harassment, solicitation or other nuisance.

18 (d) If the commission determines that the governing body of an
19 agency has not completed the evaluation described by subsection (c), the
20 commission shall make a recommendation that the governing body of the
21 agency perform such an evaluation.

22 (e) As used in this section:

23 (1) "License" means a license, certificate, registration, permit or other
24 form of authorization required by law or state agency rules and regulations
25 that must be obtained by an individual to engage in a particular occupation
26 or profession.

27 (2) "Public interest" means protection from a present and
28 recognizable harm to public health, safety or welfare. "Public interest"
29 does not include speculative threats or other non-demonstrable menaces to
30 public health, safety or welfare. For purposes of this paragraph, the term
31 "welfare" includes the financial health of the public when the absence of
32 governmental regulation unreasonably increases risk and liability to broad
33 classes of consumers.

34 Sec. 7. (a) Upon request, a state agency or officer shall assist the
35 commission.

36 (b) The members of the commission may attend any meetings and
37 proceedings of any state agency and may inspect the records, documents
38 and files of any state agency.

39 (c) In the discharge of its duties, the commission shall have access to
40 all books, accounts, records, files, documents and correspondence,
41 confidential or otherwise, of any state agency under review or in the
42 custody of any such state agency. The members of the commission shall be
43 subject to the same duty of confidentiality imposed by law on any such

1 state agency with regard to any such books, accounts, records, files,
2 documents and correspondence, and any information contained therein,
3 and shall be subject to any civil or criminal penalties imposed by law for
4 violations of such duty of confidentiality. Nothing in this subsection shall
5 be construed to supercede any requirement of federal law. If federal law
6 prohibits a state agency from disclosing information in a record, document
7 or file to the commission, including information in a record, document or
8 file created as a result of or considered during a meeting or proceeding, the
9 state agency may redact the protected information from the record,
10 document or file.

11 (d) Communications, including conversations, correspondence and
12 electronic communications, between the commission and a state agency
13 that relate to a request by the commission for assistance in conducting a
14 review shall be confidential and not subject to the open records act, K.S.A.
15 45-215 et seq., and amendments thereto. A state agency's internal
16 communications related to a request for assistance by the commission are
17 confidential, including any information prepared or maintained by the state
18 agency at the request of the commission. With respect to a record,
19 document or file prepared or maintained by the state agency that was
20 created in the normal course of the agency's business and not at the request
21 of the commission, the confidentiality created by this subsection applies
22 only to information in the possession of the commission. The provisions of
23 this subsection shall expire on July 1, 2027, unless the legislature acts to
24 reenact such provision. The provisions of this subsection shall be reviewed
25 by the legislature prior to July 1, 2027.

26 Sec. 8. (a) On or before January 15 of each year, the commission
27 shall submit to the legislature and the governor a report on each review
28 conducted under this act during the immediately preceding year.

29 (b) For any review of a state agency pursuant to section 9, and
30 amendments thereto, the report shall include:

31 (1) The commission's findings regarding the criteria provided by
32 section 6, and amendments thereto, except section 6(a)(14), and
33 amendments thereto;

34 (2) the commission's recommendations, except recommendations
35 relating to matters described in section 6(a)(14), and amendments thereto,
36 including the following:

37 (A) Recommendations on the abolition, continuation or
38 reorganization of each affected state agency and on the need for the
39 performance of the functions of the agency;

40 (B) recommendations on the consolidation, transfer or reorganization
41 of programs within state agencies not under review when the programs
42 duplicate functions performed in agencies under review;

43 (C) recommendations to improve the operations of the agency,

1 including management recommendations that do not require a change in
2 the agency's enabling statute;

3 (D) recommendations on the continuation or abolition of each
4 reporting requirement imposed on the agency by law; and

5 (E) recommendations on legislation necessary to implement any other
6 recommendations included in the report; and

7 (3) any other information the commission considers necessary for a
8 complete review of the agency.

9 (c) For all other reviews conducted by the commission, the report
10 shall include such recommendations as required under this act for such
11 review.

12 (d) The commission shall include the estimated fiscal impact of its
13 recommendations and may recommend the appropriation of funds for
14 certain programs to improve the operations of the state agency. Such
15 recommendations shall be submitted to the director of the budget.

16 (e) The commission shall submit any recommendations that do not
17 require a statutory change to the post auditor. The post auditor may
18 examine the recommendations and, at the direction of the legislative post
19 audit committee, shall conduct an audit of whether the agency has
20 implemented the recommendations and, if so, in what manner as part of
21 the such agency's next performance audit under the legislative post audit
22 act, K.S.A. 46-1101 et seq., and amendments thereto.

23 (f) Any report submitted by the commission pursuant to this section
24 shall be a public record.

25 Sec. 9. (a) On or before January 1 of the year before the year in which
26 a state agency is set to expire as provided by law, such agency shall submit
27 a report to the commission in such form and manner as prescribed by the
28 state treasurer that includes:

29 (1) The information required under section 6, and amendments
30 thereto; and

31 (2) any other information that the agency considers appropriate or
32 that is requested by the commission.

33 (b) The commission shall review each state agency at least once
34 every 10 years in accordance with a schedule for such reviews that shall be
35 established by the commission and adopted by the state treasurer as part of
36 the rules and regulations adopted pursuant to section 4, and amendments
37 thereto.

38 (c) If any board, committee, advisory committee, commission,
39 council, task force or governing body has not held a meeting for two
40 consecutive years or does not have sufficient members to constitute a
41 quorum, then the commission shall review such governmental entity in
42 accordance with this section.

43 (d) In reviewing each state agency under this section, the commission

1 shall consider those criteria described in section 6, and amendments
2 thereto.

3 (e) The commission shall submit a report of any reviews conducted
4 under this section in accordance with section 8, and amendments thereto,
5 including recommendations as described in such section.

6 Sec. 10. (a) The commission shall review each fee authorized by
7 statute and effective on or after July 1, 2022, as follows:

8 (1) For each such fee that is set to expire on a date certain, the
9 commission shall review such fee in the year immediately preceding the
10 year such fee is set to expire; and

11 (2) for all other such fees, the commission shall review such fee
12 during the fourth year following the effective date of such fee.

13 In reviewing each fee under this subsection, the commission shall
14 consider the use of such fee and whether the intended purpose of such fee
15 is still needed.

16 (b) The commission shall review the fees established by a state
17 agency at least once every five years in accordance with a schedule for
18 such reviews that shall be established by the commission and adopted by
19 the state treasurer as part of the rules and regulations adopted pursuant to
20 section 4, and amendments thereto. In reviewing fees under this
21 subsection, the commission shall consider the use of and need for the
22 amount of such fees.

23 (c) The commission shall submit a report of any reviews conducted
24 under this section in accordance with section 8, and amendments thereto,
25 and shall include recommendations as to the continuation or reduction of
26 any fee included in such report. A copy of the report shall be submitted to
27 the head or governing body of such state agency. The report shall be
28 considered by the head or governing body of such state agency within 90
29 days after receipt thereof, and the head of such state agency, if any, shall
30 issue a response to such report within such 90-day time period, or the
31 governing body of such state agency shall take action on such report
32 within such 90-day time period.

33 Sec. 11. (a) The commission shall review the fees, fines and other
34 charges assessed or imposed on students enrolled in each state educational
35 institution at least once every five years in accordance with a schedule for
36 such reviews that shall be established by the commission and adopted by
37 the state treasurer as part of the rules and regulations adopted pursuant to
38 section 4, and amendments thereto. In reviewing fees, fines and other
39 charges under this section, the commission shall consider the use of and
40 need for such fees, fines and other charges and the amount thereof.

41 (b) The commission shall submit a report of any reviews conducted
42 under this section in accordance with section 8, and amendments thereto,
43 and shall include recommendations as to the continuation or reduction of

1 any fee, fine or other charge included in such report. A copy of the report
2 shall be submitted to the state board of regents and to the chief
3 administrative officer of the state educational institution included in such
4 report. The report shall be considered by the state board of regents within
5 90 days after receipt thereof, and the board shall take action on such report
6 within such 90-day time period.

7 Sec. 12. (a) The commission shall review all real property owned by
8 the state and used by a state agency, including each state educational
9 institution, and all real property leased by the state and used by a state
10 agency, including each state educational institution, at least once every five
11 years in accordance with a schedule for such reviews that shall be
12 established by the commission and adopted by the state treasurer as part of
13 the rules and regulations adopted pursuant to section 4, and amendments
14 thereto. In reviewing such real property usage under this section, the
15 commission shall consider the use of and need for such real property,
16 whether such real property is being efficiently used and the cost of
17 ownership or rent for such real property.

18 (b) The commission shall submit a report of any reviews conducted
19 under this section in accordance with section 8, and amendments thereto,
20 and shall include recommendations as to the continuation of such usage of
21 real property, changes to such usage or changes to any lease terms for any
22 real property included in such report. A copy of the report shall be
23 submitted to the state board of regents and to the chief administrative
24 officer of the state educational institution included in such report. The
25 report shall be considered by the state board of regents within 90 days after
26 receipt thereof, and the board shall take action on such report within such
27 90-day time period.

28 Sec. 13. (a) The commission shall review all audit reports published
29 by the division of legislative post audit and determine whether any
30 recommendations shall be provided by the commission based on the
31 findings, conclusions, opinions or recommendations included in such audit
32 report.

33 (b) The commission shall submit a report of any reviews conducted
34 under this section in accordance with section 8, and amendments thereto,
35 and shall include recommendations the commission deems necessary
36 based on the audit report.

37 Sec. 14. In addition to public hearings conducted by the commission
38 under section 5, and amendments thereto, the commission shall conduct at
39 least one public hearing each year to permit residents of this state to
40 provide testimony to the commission regarding state agencies, state
41 programs and fees that are subject to review under this act at a later date.

42 Sec. 15. The state treasurer shall develop and maintain a website for
43 the Kansas sunset advisory commission that shall be accessible via a direct

1 link located on the main webpage of the state treasurer's website. All
2 reports, including all recommendations, shall be published on the
3 commission's website. Such website may contain such other information
4 regarding the commission as the state treasurer deems necessary.

5 Sec. 16. This act shall take effect and be in force from and after its
6 publication in the statute book.