

**Testimony on Substitute for SB 34
Federal and State Affairs Committee - House
March 9, 2022**

Chairman Barker and members of the Committee, thank you for the opportunity to provide oppositional testimony on Substitute for Senate Bill 34. Sub SB 34 proposes new provisions to Article 4 of Chapter 77 of the Kansas Statutes dealing with administrative rules and regulations.

In brief, Sub SB 34 proposes that a state executive agency review and evaluate its regulations once every five years per a designated schedule and develop a report as to the need for the regulation. Sub SB 34 differentiates between existing regulations and regulations promulgated after July 1, 2022, but both would be reviewed and evaluated on a 5-year basis. The evaluation report should include "...a statement for each rule and regulation as to whether such rule and regulation is necessary for the implementation and administration of state law or may be revoked..." The overall guide star for the regulation, whether as an existing regulation to be maintained or a new regulation being promulgated, would be whether it "...serves an identifiable public purpose to support state law and may not be broader than is necessary to meet such public purpose.

KDHE has concerns about these requirements. First, the specific scope of the bill is unclear as to whether it only applies to state law. A brief explanation of KDHE highlights this point. KDHE consists of three Divisions: Environment, Public Health; and Health Care Finance. Health Care Finance administers the Kansas Medicaid program. There are several connections between the agency and the federal government. The Environment Division works in collaboration with the U.S. Environmental Protection Agency under a delegation of authority. Kansas Medicaid has an analogous relationship with the Centers for Medicare and Medicaid Services that allows for drawdown of federal funds. K.S.A. 48-1601 et seq. requires the state to "...to institute and maintain a regulatory program for sources of radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government; (2) an integrated, effective system of regulation within the state; and (3) a system consonant insofar as possible with those of other states..." As a result, KDHE has an agreement with the U.S. Nuclear Regulatory Commission under a delegation of authority to administer Kansas along federal guidelines. (Kansas, also, has approximately 350 KDHE technical regulations based on federal radiation standards.) KDHE's question is how to treat regulations that have federal roots since the focus in this bill is on regulations that "...serve an identifiable public purpose to support state law...?"

Defining the scope of Sub SB34 is important to determine the agency's impact and the effort needed to comply with the bill. Currently, KDHE's rules and regulations sit in three different agencies as defined by

the Kansas Administrative Regulations. In each of these three chapters, there exists dozens of specific articles that provide itemized regulations. Agency staff estimated approximately 2,000 regulations currently exist for KDHE.

If all regulations are reviewed, KDHE estimates needing 20-53 additional Full Time Equivalent (FTE's hereafter) spread between KDHE Legal, Office of the Secretary, and each Division to meet this analysis and review process. Cost range is estimated at \$1,247,400 to \$3,267,000. The analysis is below for ease of display. KDHE did consider whether spot or limited full-time employment might be substituted, but questioned whether that would work since the review process involved not only a heavy lift for existing regulations to meet the 2024 deadline for the first review, and an ongoing lift considering new regulations trigger their own 5-year review schedule separate from the scheduled review schedule. As a result, this will require continual reviews with a spike every 5 years beginning in 2024.

I would stand for questions from the Committee at this time.

- a. Division Employees - Assumed an average of \$45,000 in salary and 32% fringe for each new employee for 5 – 15 per division
 - i. Estimates for 15 new employees (at 5 per division) - $\$45,000 \times 1.32 \times 15 \text{ employees} = \$891,000$ per year
 - ii. Estimates for 45 new employees - $\$45,000 \times 1.32 \times 45 \text{ employees} = \$2,673,000$ per year
- b. KDHE Attorneys - Assumed an average of \$60,000 and 32% fringe for each attorney and 1-2 attorneys for each KDHE Division (Public Health, Environment, Health Care Finance)
 - i. Estimates for 3 new attorneys - $\$60,000 \times 1.32 \times 3 = \$237,600$
 - ii. Estimates for 6 new attorneys - $\$60,000 \times 1.32 \times 6 = \$475,200$
- c. Legislative Liaison – 2 extra staff at average of \$45,000 in salary and 32% fringe - $\$45,000 \times 1.32 \times 2 = \$118,800$