

HOUSE BILL No. 2526

By Joint Committee on Administrative Rules and Regulations

1-23

Proposed Amendment for HB 2526
House Committee on Commerce, Labor
and Economic Development
March 1, 2018
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Office of Revisor of Statutes

1 AN ACT concerning administrative rules and regulations; relating to
2 reporting impact on business; joint committee on administrative rules
3 and regulations; state rules and regulations board, amending K.S.A.
4 2017 Supp. 77-416, 77-423 and 77-436 and repealing the existing
5 sections.

approval of rules and regulations by the director of the budget;

report made by committee;

77-420, 77-420a, 77-421, 77-422,

6
7 Be it enacted by the Legislature of the State of Kansas:

8 Section 1. K.S.A. 2017 Supp. 77-416 is hereby amended to read as
9 follows: 77-416. (a) every state agency shall file with the secretary of state
10 every rule and regulation adopted by it and every amendment and
11 revocation thereof in the manner prescribed by the secretary of state. Each
12 rule and regulation shall include a citation to the statutory section or
13 sections being implemented or interpreted and a citation of the authority
14 pursuant to which it, or any part thereof, was adopted. Every rule and
15 regulation filed in the office of the secretary of state shall be accompanied
16 by a copy of the economic impact statement required by subsection (b) and
17 a copy of the environmental benefit statement if required by subsection
18 (d). A copy of any document adopted by reference in a rule and regulation
19 shall be available from the state agency which that adopted the rule and
20 regulation upon request by any person interested therein. The state agency,
21 under the direction of the secretary of state, shall number each section with
22 a distinguishing number and, in making a compilation of the rules and
23 regulations, the sections shall be arranged in numerical order. A decimal
24 system of numbering shall be prohibited.

25 (b) (1) At the time of drafting a proposed rule and regulation or
26 amendment to an existing rule and regulation, the state agency shall
27 consider the economic impact of such proposed rule and regulation or
28 amendment upon all governmental agencies or units and all persons which
29 who will be subject thereto and upon the general public. Prior to giving
30 notice of a hearing on a proposed rule and regulation, the state agency
31 shall prepare an economic impact statement that shall include:

the

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An analysis,

, and cost and benefit quantification

If the approach chosen by the Kansas agency to address the policy issue is
different from that utilized by agencies of contiguous states or of the federal
government, the economic impact statement shall include an explanation of why
the Kansas agency's rule and regulation differs

32 (A) A brief description of the proposed rules and regulations and
33 what is intended to be accomplished by their adoption;

34 (B) whether the proposed rule and regulation is mandated by federal
35 law as a requirement for participating in or implementing a federally
36 subsidized or assisted program and whether the proposed rules and

regulations exceed the requirements of applicable federal law;

~~(C) a description of the costs, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof; and~~

~~(D) a description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. The state agency may consult with other state agencies when preparing the economic impact statement; and~~

~~(E) a description of businesses that would be directly affected by the proposed rules and regulations, the benefits of the proposed rules and regulations and measures taken to minimize the impact of the proposed rules and regulations on business and economic development within the state of Kansas;~~

(2) The state agency shall consult with the League of Kansas municipalities, Kansas association of counties and the Kansas association of school boards, as appropriate, when preparing the economic impact statement of a proposed rule and regulation which increases or decreases revenues of cities, counties or school districts or imposes functions or responsibilities on cities, counties or school districts ~~which~~ that will increase their expenditures or fiscal liability.

(3) The state agency shall reevaluate and, when necessary, update the statement at the time of filing a rule and regulation with the secretary of state. If a public hearing was held prior to the adoption of the rule and regulation, a state agency at the time of filing a rule and regulation with the secretary of state shall include as a part of the economic impact statement a statement specifying the time and place at which the hearing was held and the attendance at the hearing. A copy of the current economic impact statement shall be available from the state agency upon request by any party interested therein.

~~(c) Upon request of the state rules and regulations board, the joint committee on administrative rules and regulations or the chairperson of either committee or board, the director of the budget shall review the economic impact statement prepared by any state agency and shall prepare a supplemental or revised statement. If possible, the supplemental or revised statement shall include a reliable estimate in dollars of the anticipated change in revenues and expenditures of the state. It also shall include a statement, if determinable or reasonably foreseeable, of the immediate and long-range economic impact of the rule and regulation upon persons subject thereto, small employers and the general public. If,~~

(C) an analysis specifically addressing the following factors:  
(i) The extent to which the rule and regulation will enhance or restrict business activities and growth;

(ii) the economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, business sectors, public utility ratepayers, individuals and local governmental units that will be affected by the proposed rule and regulation and on the state economy as a whole;

(iii) the businesses that would be directly affected by the proposed rule and regulation;  
(iv) the benefits of the proposed rule and regulation compared to the cost;  
(v) measures taken by the agency to minimize the cost and impact of the proposed rule and regulation on business and economic development within the state of Kansas, local government and individuals;

(vi) an estimate, expressed as a single dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units or members of the public and a determination of whether those costs will exceed \$5,000,000 over any two-year period; and

(vii) An estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units and individuals as a result of the proposed rule, expressed as a single dollar figure.

The agency shall consult and solicit information from businesses, business associations, local governmental units, state agencies or institutions and members of the public that may be affected by the proposed rule and regulation or that may provide relevant information.

As required pursuant to the provisions of K.S.A. 77-420(d), and amendments thereto,

economic impact  
when directed to do so by the director of the budget and, if approved by the director of the budget, shall submit the revised economic impact statement

Pursuant to the provisions of K.S.A. 77-420, and amendments thereto,  
and an independent analysis by the director of the budget of the cost and the factors as set forth in subsection (b)(1)(A) and (C) and subsection (e)

The director of the budget shall follow the procedures set forth in K.S.A. 77-420, and amendments thereto, in evaluating and accepting or rejecting the proposed rule and regulation. No agency shall submit a rule and regulation to the secretary of state for filing before receiving the approval of the director of the budget as provided in this subsection and K.S.A. 77-420, and amendments thereto.

*And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly*

1 after careful investigation, it is determined that no dollar estimate is  
 2 possible, the statement shall set forth the reasons why no dollar estimate  
 3 can be given. Every state agency is directed to cooperate with the division  
 4 of the budget in the preparation of any statement pursuant to this  
 5 subsection when, and to the extent, requested by the director of the budget.  
 6 (d) At the time of drafting a proposed environmental rule and  
 7 regulation or amendment to an existing environmental rule and regulation,  
 8 the state agency shall consider the environmental benefit of such proposed  
 9 rule and regulation or amendment. Prior to giving notice of a hearing on a  
 10 proposed rule and regulation, the state agency shall prepare an  
 11 environmental benefit statement that shall include a description of the need  
 12 for and the environmental benefits ~~which~~ that will likely accrue as the  
 13 result of the proposed rule and regulation or amendment. The description  
 14 shall summarize, when applicable, research indicating the level of risk to  
 15 the public health or the environment being removed or controlled by the  
 16 proposed rule and regulation or amendment. When specific contaminants  
 17 are to be controlled by the proposed rule and regulation or amendment, the  
 18 description shall indicate the level at which the contaminants are  
 19 considered harmful according to currently available research. The state  
 20 agency may consult with other state agencies when preparing the  
 21 environmental benefit statement. The state agency shall reevaluate and,  
 22 when necessary, update the statement at the time of filing a rule and  
 23 regulation with the secretary of state. A copy of the current environmental  
 24 benefit statement shall be available from the state agency upon request by  
 25 any party interested therein.  
 26 (e) In addition to the requirements of subsection (b), the economic  
 27 impact statement for all environmental rules and regulations shall include:  
 28 (1) A description of the capital and annual costs of compliance with  
 29 the proposed rules and regulations, and the persons who will bear those  
 30 costs;  
 31 (2) a description of the initial and annual costs of implementing and  
 32 enforcing the proposed rules and regulations, including the estimated  
 33 amount of paperwork, and the state agencies, other governmental agencies  
 34 or other persons or entities who will bear the costs;  
 35 (3) a description of the costs ~~which~~ that would likely accrue if the  
 36 proposed rules and regulations are not adopted, the persons who will bear  
 37 the costs and those who will be affected by the failure to adopt the rules  
 38 and regulations; and  
 39 (4) a detailed statement of the data and methodology used in  
 40 estimating the costs used in the statement

41 Sec. 2. K.S.A. 2017 Supp. 77-423 is hereby amended to read as  
 42 follows: 77-423. There is hereby created a state rules and regulations board  
 43 consisting of the attorney general or the attorney general's designee, the

(f) In 2021, the legislative post audit committee shall direct the legislative division of post audit to conduct an audit to study:  
 (1) The accuracy of economic impact statements submitted by state agencies pursuant to this section for the immediately preceding 7 years;  
 (2) the impact the review by the director of the budget has had on the accuracy of economic impact statements submitted by state agencies pursuant to this section; and  
 (3) whether the \$5,000,000 cost figure is the appropriate amount of economic impact to trigger the hearing procedure required by K.S.A. 77-420(a), and amendments thereto.

See attached insert for amendments to K.S.A. 77-420

Make technical conforming changes to K.S.A. 77-420a, 77-421 and 77-422

1 secretary of state or the secretary of state's designee, the secretary of  
2 administration or the secretary of administration's designee, the  
3 chairperson of the joint committee on administrative rules and regulations  
4 or a member of the joint committee designated by the chairperson from the  
5 same house of the legislature as the chairperson ~~and~~, the vice-chairperson  
6 of the joint committee on administrative rules and regulations or a member  
7 of the joint committee designated by the vice-chairperson from the same  
8 house of the legislature as the vice-chairperson, *and the ranking minority*  
9 *member of the joint committee on administrative rules and regulations or*  
10 *a member of the joint committee designated by the minority leader of the*  
11 *same house of the legislature as the chairperson.* If a member is  
12 designated to serve on the board by the chairperson or vice-chairperson of  
13 the joint committee, the designated member shall serve in lieu of the  
14 designating officer on a temporary or permanent basis as specified by the  
15 designating officer. The attorney general shall be the chairperson of the  
16 board. The secretary of state shall serve as the secretary to the board. The  
17 state rules and regulations board shall determine whether a rule and  
18 regulation should be adopted as a temporary rule and regulation, shall  
19 determine the rules and regulations to be published in the Kansas  
20 administrative regulations and in the annual supplement to such  
21 regulations as provided for in this act and shall perform such other duties  
22 as may be required by this act.

23 Sec. 3. K.S.A. 2017 Supp. 77-436 is hereby amended to read as  
24 follows: 77-436. (a) There is hereby established a joint committee on  
25 administrative rules and regulations ~~which shall consist~~ consisting of five  
26 senators and seven members of the house of representatives. The five  
27 senator members shall be appointed as follows: Three by the committee on  
28 organization, calendar and rules and two by the minority leader of the  
29 senate. The seven representative members shall be appointed as follows:  
30 Four by the speaker of the house of representatives and three by the  
31 minority leader of the house of representatives. The committee on  
32 organization, calendar and rules shall designate a senator member to be  
33 chairperson or vice-chairperson of the joint committee as provided in this  
34 section. The speaker of the house of representatives shall designate a  
35 representative member to be chairperson or vice-chairperson of the joint  
36 committee as provided in this section. *The minority leader of the senate*  
37 *shall designate a senator member to be the ranking minority member of*  
38 *the joint committee as provided in this section. The minority leader of the*  
39 *house of representatives shall designate a representative member to be the*  
40 *ranking minority member of the joint committee as provided in this*  
41 *section.*

42 (b) A quorum of the joint committee on administrative rules and  
43 regulations shall be seven. All actions of the committee may be taken by a

1 majority of those present when there is a quorum. In odd-numbered years  
 2 the chairperson ~~and the ranking minority member~~ of the joint committee  
 3 shall be the designated ~~member~~ members of the house of representatives  
 4 from the convening of the regular session in that year until the convening  
 5 of the regular session in the next ensuing year. In even-numbered years the  
 6 chairperson ~~and the ranking minority member~~ of the joint committee shall  
 7 be the designated ~~member~~ members of the senate from the convening of  
 8 the regular session of that year until the convening of the regular session of  
 9 the next ensuing year. The vice-chairperson shall exercise all of the powers  
 10 of the chairperson in the absence of the chairperson.

11 (c) All proposed rules and regulations shall be reviewed by the joint  
 12 committee on administrative rules and regulations during the public  
 13 comment period required by K.S.A. 77-421, and amendments thereto. ~~As  
 14 part of such review, the committee may direct communications to state  
 15 agencies making comments and recommendations, and inviting  
 16 concerns and approval or disapproval of any proposed rules and  
 17 regulations.~~ The committee may introduce such legislation as it deems  
 18 necessary in performing its functions of reviewing administrative rules and  
 19 regulations.

20 (d) All rules and regulations filed each year in the office of secretary  
 21 of state shall be subject to review by the joint committee. The committee  
 22 may introduce such legislation as it deems necessary in performing its  
 23 functions of reviewing administrative rules and regulations.

24 (e) The joint committee shall meet on call of the chairperson as  
 25 authorized by the legislative coordinating council. All such meetings shall  
 26 be held in Topeka, unless authorized to be held in a different place by the  
 27 legislative coordinating council. Members of the joint committee shall  
 28 receive compensation ~~and~~ travel expenses and subsistence expenses or  
 29 allowances as provided in K.S.A. 75-3212, and amendments thereto, when  
 30 attending meetings of such committee authorized by the legislative  
 31 coordinating council.

32 (f) Amounts paid under authority of this section shall be paid from  
 33 appropriations for legislative expense and vouchers therefor shall be  
 34 prepared by the director of legislative administrative services and  
 35 approved by the chairperson or vice-chairperson of the legislative  
 36 coordinating council.

37 Sec. 4. K.S.A. 2017 Supp. 77-416, 77-423 and 77-436 are hereby  
 38 repealed.

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

The committee shall issue a report to the legislature following each meeting making comments and recommendations and indicating concerns about any proposed rule and regulation. Such report shall be made available to each agency that had proposed rules and regulations reviewed at such meeting during the agency's public comment period for such proposed rules and regulations required by K.S.A. 77-421, and amendments thereto. If having a final report complete by the public hearing required by K.S.A. 77-421, and amendments thereto, is impractical, a preliminary report shall be made available to the agency containing the committee's comments. The preliminary report shall be incorporated into the final report and made available to each agency.

(e)

*And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly*

77-420, 77-420a, 77-421, 77-422,

*And by renumbering remaining sections accordingly*

Sec. 2. K.S.A. 2017 Supp. 77-420 is hereby amended to read as follows: 77-420. (a) (1) Every rule and regulation proposed to be adopted by any state agency, before being submitted to the secretary of administration and the attorney general as required by this section, shall be submitted with the economic impact statement for the rule and regulation required by K.S.A. 77-416, and amendments thereto, to the director of the budget for review of the accuracy and completeness of the agency's economic impact statement. The director of the budget shall make an independent determination of the amount of implementation and compliance costs reasonably expected to be incurred by or passed along to businesses, local government and individuals over any two-year period as a result of the proposed rule and regulation and shall conduct an independent analysis of the factors set forth in K.S.A. 77-416(b)(1)(A) and (C) and (e), and amendments thereto. Every rule and regulation approved by the director of the budget shall be stamped as approved, and the date of approval shall be indicated.

(2) If the director independently determines that a proposed rule and regulation submitted or resubmitted by the agency will not result in implementation or compliance costs of more than \$5,000,000 for businesses, local government or individuals in any two-year period, the director shall:

(A) Approve the rule and regulation if the director independently determines that the economic impact statement is accurate, demonstrates a complete analysis as required by K.S.A. 77-416(b)(1)(A) and (C) and (e), and amendments thereto, and the director concurs with the economic impact statement; or

(B) disapprove the rule and regulation.

(3) If the director of the budget determines that the proposed rule and regulation will result in implementation and compliance costs of more than \$5,000,000 for businesses, local government or individuals in any two-year period, the director of the budget shall:

(A) Approve the proposed rule and regulation, if the agency, prior to the submission or the resubmission of a rule and regulation to the director, holds a public hearing and finds that the costs of the proposed rule and regulation have been accurately determined and are necessary for achieving legislative intent and the director, after an independent analysis, concurs with the agency's findings and analysis and approves the economic impact statement; or

(B) disapprove the proposed rule and regulation.

(b) The director of the budget shall submit an annual report to the legislature and to the joint committee on administrative rules and regulations on the first day of the 2019 regular legislative session and subsequent regular legislative sessions on all rules and regulations approved or denied by the director. The report shall include the text of each rule and regulation reviewed, the final economic impact statement and a summary of the director's analysis supporting the decision to approve or reject the rule and regulation. The director shall immediately submit a separate report to the legislature, if in session, and the joint committee on administrative rules and regulations upon the approval or denial of a rule or regulation with costs determined to be greater than \$5,000,000 for businesses, local government or individuals over any two-year period. The report shall include an analysis of the agency's and the director's decisions with respect to the necessity of the cost of the rule and regulation to achieve legislative intent.

(c) Every rule and regulation proposed to be adopted by any state agency that has been approved by the director of the budget pursuant to the provisions of subsection (a), before being submitted to the

attorney general under this section, shall be submitted to the secretary of administration for approval of its organization, style, orthography and grammar subject to such requirements as to organization, style, orthography and grammar as the secretary may adopt. Every rule and regulation submitted to the secretary of administration under this subsection ~~(a)~~ shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the secretary of administration under this subsection ~~(a)~~ shall be stamped as approved and the date of such approval shall be indicated therein.

~~(b)~~ (d) Every rule and regulation proposed by any state agency which has been approved by the director of the budget and the secretary of administration as provided in subsections (a) and (c) before being adopted or filed shall be submitted to the attorney general for an opinion as to the legality of the same, including whether the making of such rule and regulation is within the authority conferred by law on the state agency. The attorney general shall promptly furnish an opinion as to the legality of the proposed rule and regulation so submitted. Every rule and regulation submitted to the attorney general under this subsection (b) shall be accompanied by a copy of any document which is adopted by reference by the rule and regulation. Every rule and regulation approved by the attorney general under this subsection (b) shall be stamped as approved and the date of such approval shall be indicated therein.

~~(c)~~ (e) No rule and regulation shall be filed by the secretary of state unless:

(1) The rule and regulation has been approved by the director of the budget;

(2) The organization, style, orthography and grammar have been approved by the secretary of administration;

~~(2)~~ (3) the rule and regulation has been approved in writing by the attorney general as to legality;

~~(3)~~ (4) the rule and regulation has been formally adopted by the state agency after it has been approved by the director of the budget, the secretary of administration and the attorney general and is accompanied by a certified or other formal statement of adoption when adoption is by an executive officer of a state agency, or by a certified copy of the roll call vote required for its adoption by K.S.A. 77-421, and amendments thereto, when adoption is by a board, commission, authority or other similar body;

~~(4)~~ (5) the rule and regulation to be filed is accompanied by a copy of the economic impact statement as provided by K.S.A 77-416, and amendments thereto, that has been reviewed and approved by the director of the budget as provided by subsection (a); and

~~(5)~~ (6) the rule and regulation to be filed is accompanied by a copy of the environmental benefit statement required by K.S.A. 77-416, and amendments thereto, if applicable.