

HOUSE BILL No. 2648

By Committee on Commerce, Labor and Economic Development

Requested by Eric Stafford on behalf of the Kansas Chamber of Commerce

1-31

1 AN ACT concerning administrative rules and regulations; requirements for
2 adoption of rules and regulations; relating to economic impact
3 statements; requiring legislative ratification for certain rules and
4 regulations; requiring the director of the budget to review an agency's
5 determination of implementation and compliance costs and disapprove
6 proposed rules and regulations with incomplete or inaccurate economic
7 impact statements; amending K.S.A. 2023 Supp. 77-415, 77-416 and
8 77-420 and repealing the existing sections.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 New Section 1. (a) (1) If an economic impact statement required by
12 K.S.A. 77-420, and amendments thereto, or a revised economic impact
13 statement prepared pursuant to K.S.A. 77-416(b)(3), and amendments
14 thereto, indicates that \$1,000,000 or more in implementation and
15 compliance costs are reasonably expected to be incurred by or passed
16 along to businesses, local governmental units and individuals as a result of
17 the proposed rule and regulation over the initial five-year period following
18 adoption of such rule and regulation, the state agency proposing such rule
19 and regulation shall not adopt such rule and regulation unless such rule
20 and regulation has been ratified by the legislature. A proposed rule and
21 regulation shall be deemed ratified if a bill authorizing such rule and
22 regulation is enacted by the legislature. Any member of the legislature may
23 introduce a bill authorizing a state agency to adopt a rule and regulation
24 that such agency is prohibited from adopting under this subsection. The
25 state agency may resume adopting such proposed rule and regulation upon
26 enactment of a bill introduced under this subsection.

27 (b) If a state agency is prohibited from adopting a proposed rule and
28 regulation under subsection (a), such agency may modify the proposed
29 rule and regulation to lower the implementation and compliance costs of
30 the proposed rule and regulation. Any such modification shall be germane
31 to the subject of the proposed rule and regulation. If a proposed rule and
32 regulation is modified pursuant this subsection, the state agency shall
33 prepare a revised economic impact statement pursuant to K.S.A. 77-416(b)
34 (3), and amendments thereto. A state agency may adopt such modified rule
35 and regulation if the revised economic impact statement indicates that

1 \$1,000,000 or more in implementation and compliance costs are not
2 reasonably expected to be incurred by or passed along to businesses, local
3 governmental units and individuals as a result of the proposed rule and
4 regulation over the initial five-year period following adoption of such
5 proposed rule and regulation.

6 (c) The provisions of this section shall not apply to temporary rules
7 and regulations adopted pursuant to K.S.A. 77-722, and amendments
8 thereto, or rules and regulations proposed because of a federal mandate as
9 described in K.S.A. 77-416(b)(1)(B), and amendments thereto.

10 (d) This section shall be a part of and supplemental to the rules and
11 regulations filing act.

12 Sec. 2. K.S.A. 2023 Supp. 77-415 is hereby amended to read as
13 follows: 77-415. (a) K.S.A. 77-415 through ~~77-438~~ 77-440 and section 1,
14 and amendments thereto, shall be known and may be cited as the rules and
15 regulations filing act.

16 (b) (1) Unless otherwise provided by statute or constitutional
17 provision, each rule and regulation issued or adopted by a state agency
18 shall comply with the requirements of the rules and regulations filing act.
19 Except as provided in this section, any standard, requirement or other
20 policy of general application may be given binding legal effect only if it
21 has complied with the requirements of the rules and regulations filing act.

22 (2) Notwithstanding the provisions of this section:

23 (A) An agency may bind parties, establish policies, and interpret
24 statutes or regulations by order in an adjudication under the Kansas
25 administrative procedure act or other procedures required by law, except
26 that such order shall not be used as precedent in any subsequent
27 adjudication against a person who was not a party to the original
28 adjudication unless the order is:

29 (i) Designated by the agency as precedent;

30 (ii) not overruled by a court or later adjudication; and

31 (iii) disseminated to the public in one of the following ways:

32 (a) Inclusion in a publicly available index, maintained by the agency
33 and published on its website, of all orders designated as precedent;

34 (b) publication by posting in full on an agency website in a format
35 capable of being searched by key terms; or

36 (c) being made available to the public in such other manner as may be
37 prescribed by the secretary of state.

38 (B) Any statement of agency policy may be treated as binding within
39 the agency if such statement of policy is directed to: ~~(i)~~— agency personnel
40 relating to the performance of their duties; ~~(ii)~~— or the internal
41 management of or organization of the agency. No ~~such~~ statement of
42 agency policy listed in ~~clauses (i) and (ii)~~ *this subparagraph* may be relied
43 on to bind the general public.

1 (C) An agency may provide forms, the content or substantive
2 requirements of which are prescribed by rule and regulation or statute,
3 except that no such form may give rise to any legal right or duty or be
4 treated as authority for any standard, requirement or policy reflected
5 therein.

6 (D) An agency may provide guidance or information to the public,
7 describing any agency policy or statutory or regulatory requirement except
8 that no such guidance or information may give rise to any legal right or
9 duty or be treated as authority for any standard, requirement or policy
10 reflected therein.

11 (E) None of the following shall be subject to the rules and regulations
12 filing act:

13 (i) Any policy relating to the curriculum of a public educational
14 institution or to the administration, conduct, discipline, or graduation of
15 students from such institution.

16 (ii) Any parking and traffic regulations of any state educational
17 institution under the control and supervision of the state board of regents.

18 (iii) Any rule and regulation relating to the emergency or security
19 procedures of a correctional institution, as defined in K.S.A. 75-5202(d),
20 and amendments thereto.

21 (iv) Any order issued by the secretary of corrections or any warden of
22 a correctional institution under K.S.A. 75-5256, and amendments thereto.

23 (F) When a statute authorizing an agency to issue rules and
24 regulations or take other action specifies the procedures for doing so, those
25 procedures shall apply instead of the procedures in the rules and
26 regulations filing act.

27 (c) As used in the rules and regulations filing act, and amendments
28 thereto, unless the context clearly requires otherwise:

29 (1) "Board" means the state rules and regulations board established
30 under the provisions of K.S.A. 77-423, and amendments thereto.

31 (2) "Environmental rule and regulation" means:

32 (A) A rule and regulation adopted by the secretary of agriculture, the
33 secretary of health and environment or the state corporation commission
34 that has as a primary purpose the protection of the environment; or

35 (B) a rule and regulation adopted by the secretary of wildlife and
36 parks concerning threatened or endangered species of wildlife as defined
37 in K.S.A. 32-958, and amendments thereto.

38 (3) *"Implementation and compliance costs" means direct costs that*
39 *are readily ascertainable based upon standard business practices,*
40 *including, but not limited to, fees, the cost to obtain a license or*
41 *registration, the cost of equipment required to be installed or used,*
42 *additional operating costs incurred, the cost of monitoring and reporting*
43 *and any other costs to comply with the requirements of the proposed rule*

1 *and regulation.*

2 (4) "Person" means an individual, firm, association, organization,
3 partnership, business trust, corporation, company or any other legal or
4 commercial entity.

5 ~~(4)~~(5) "Rule and regulation," "rule;" and "regulation" means a
6 standard, requirement or other policy of general application that has the
7 force and effect of law, including amendments or revocations thereof,
8 issued or adopted by a state agency to implement or interpret legislation.

9 ~~(5)~~(6) "Rulemaking" means the same as defined in K.S.A. 77-602,
10 and amendments thereto.

11 ~~(6)~~(7) "Small employer" means any person, firm, corporation,
12 partnership or association that employs not more than 50 employees, the
13 majority of whom are employed within this state.

14 ~~(7)~~(8) "State agency" means any officer, department, bureau, division,
15 board, authority, agency, commission or institution of this state, except the
16 judicial and legislative branches, which is authorized by law to promulgate
17 rules and regulations concerning the administration, enforcement or
18 interpretation of any law of this state.

19 Sec. 3. K.S.A. 2023 Supp. 77-416 is hereby amended to read as
20 follows: 77-416. (a) Every state agency shall file with the secretary of state
21 every rule and regulation adopted by it and every amendment and
22 revocation thereof in the manner prescribed by the secretary of state. Each
23 rule and regulation shall include a citation to the statutory section or
24 sections being implemented or interpreted and a citation of the authority
25 pursuant to which it, or any part thereof, was adopted. Every rule and
26 regulation filed in the office of the secretary of state shall be accompanied
27 by a copy of the economic impact statement required by subsection (b) and
28 a copy of the environmental benefit statement if required by subsection
29 (d). A copy of any document adopted by reference in a rule and regulation
30 shall be available from the state agency that adopted the rule and
31 regulation upon request by any ~~person~~ *individual* interested therein. The
32 state agency, under the direction of the secretary of state, shall number
33 each section with a distinguishing number and, in making a compilation of
34 the rules and regulations, the sections shall be arranged in numerical order.
35 A decimal system of numbering shall be prohibited.

36 (b) (1) At the time of drafting a proposed rule and regulation or
37 amendment to an existing rule and regulation, the state agency shall
38 consider the economic impact of the proposed rule and regulation. The
39 state agency shall prepare an economic impact statement that shall include:

40 (A) An analysis, brief description, and cost and benefit quantification
41 of the proposed rules and regulations and what is intended to be
42 accomplished by their adoption. If the approach chosen by the Kansas
43 agency to address the policy issue is different from that utilized by

1 agencies of contiguous states or of the federal government, the economic
2 impact statement shall include an explanation of why the Kansas agency's
3 rule and regulation differs;

4 (B) whether the proposed rule and regulation is mandated by federal
5 law as a requirement for participating in or implementing a federally
6 subsidized or assisted program and whether the proposed rules and
7 regulations exceed the requirements of applicable federal law;

8 (C) an analysis specifically addressing the following factors:

9 (i) The extent to which the rule and regulation will enhance or restrict
10 business activities and growth;

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

16 (iii) the businesses that would be directly affected by the proposed
17 rule and regulation;

18 (iv) the benefits of the proposed rule and regulation compared to the
19 cost;

20 (v) measures taken by the agency to minimize the cost and impact of
21 the proposed rule and regulation on business and economic development
22 within the state of Kansas, local government and individuals; and

23 (vi) an estimate of the total annual implementation and compliance
24 costs that are reasonably expected to be incurred by or passed along to
25 businesses, local governmental units or ~~members of the public~~ *individuals*
26 and a determination of whether those costs will exceed \$1,000,000 over
27 ~~any two-year~~ *the initial five-year* period ~~from the effective date of this act~~
28 ~~through June 30, 2024, or exceed \$3,000,000 over any two-year period on~~
29 ~~and after July 1, 2024~~ *following adoption of the proposed rule and*
30 *regulation.*

31 (2) The state agency shall consult with the league of Kansas
32 municipalities, Kansas association of counties and the Kansas association
33 of school boards, as appropriate, when preparing the economic impact
34 statement of a proposed rule and regulation which increases or decreases
35 revenues of cities, counties or school districts or imposes functions or
36 responsibilities on cities, counties or school districts that will increase their
37 expenditures or fiscal liability. The agency shall consult and solicit
38 information from businesses, business associations, local governmental
39 units, state agencies or institutions and members of the public that may be
40 affected by the proposed rule and regulation or that may provide relevant
41 information.

42 (3) As required pursuant to the provisions of K.S.A. 77-420(d), and
43 amendments thereto, the state agency shall reevaluate and, when

1 necessary, update the economic impact statement when directed to do so
2 by the director of the budget and, if approved by the director of the budget,
3 shall submit the revised economic impact statement at the time of filing a
4 rule and regulation with the secretary of state. If a public hearing was held
5 prior to the adoption of the rule and regulation, a state agency at the time
6 of filing a rule and regulation with the secretary of state shall include as a
7 part of the economic impact statement a statement specifying the time and
8 place at which the hearing was held and the attendance at the hearing. A
9 copy of the current economic impact statement shall be available from the
10 state agency upon request by any party interested therein.

11 (4) The implementation and compliance costs determined under
12 subsection (b)(1)(C)(vi) shall be those additional costs reasonably
13 expected to be incurred and shall be separately identified for the affected
14 businesses, local governmental units and ~~members of the public~~
15 *individuals*. In determining total additional costs of such proposed rules
16 and regulations, the state agency shall not account for any actual or
17 estimated cost savings that may be realized by the implementing state
18 agency, local government or by ~~members of the public~~ *individuals*.

19 (c) Pursuant to the provisions of K.S.A. 77-420, and amendments
20 thereto, the director of the budget shall review the economic impact
21 statement prepared by any state agency and shall prepare a supplemental
22 or revised statement and an independent analysis by the director of the
23 budget of the cost and the factors as set forth in subsection (b)(1)(A) and
24 (C) and subsection (e). If possible, the supplemental or revised statement
25 shall include a reliable estimate in dollars of the anticipated change in
26 revenues and expenditures of the state. It also shall include a statement, if
27 determinable or reasonably foreseeable, of the immediate and long-range
28 economic impact of the rule and regulation upon ~~persons~~ *individuals*
29 subject thereto, small employers and the general public. If, after careful
30 investigation, it is determined that no dollar estimate is possible, the
31 statement shall set forth the reasons why no dollar estimate can be given.
32 Every state agency is directed to cooperate with the division of the budget
33 in the preparation of any statement pursuant to this subsection when, and
34 to the extent, requested by the director of the budget. The director of the
35 budget shall follow the procedures set forth in K.S.A. 77-420, and
36 amendments thereto, in evaluating and accepting or rejecting the proposed
37 rule and regulation. No agency shall submit a rule and regulation to the
38 secretary of state for filing before receiving the approval of the director of
39 the budget as provided in this subsection and K.S.A. 77-420, and
40 amendments thereto.

41 (d) At the time of drafting a proposed environmental rule and
42 regulation or amendment to an existing environmental rule and regulation,
43 the state agency shall consider the environmental benefit of such proposed

1 rule and regulation or amendment. Prior to giving notice of a hearing on a
2 proposed rule and regulation, the state agency shall prepare an
3 environmental benefit statement that shall include a description of the need
4 for and the environmental benefits that will likely accrue as the result of
5 the proposed rule and regulation or amendment. The description shall
6 summarize, when applicable, research indicating the level of risk to the
7 public health or the environment being removed or controlled by the
8 proposed rule and regulation or amendment. When specific contaminants
9 are to be controlled by the proposed rule and regulation or amendment, the
10 description shall indicate the level at which the contaminants are
11 considered harmful according to currently available research. The state
12 agency may consult with other state agencies when preparing the
13 environmental benefit statement. The state agency shall reevaluate and,
14 when necessary, update the statement at the time of filing a rule and
15 regulation with the secretary of state. A copy of the current environmental
16 benefit statement shall be available from the state agency upon request by
17 any party interested therein.

18 (e) In addition to the requirements of subsection (b), the economic
19 impact statement for all environmental rules and regulations shall include:

20 (1) A description of the capital and annual costs of compliance with
21 the proposed rules and regulations, and the ~~persons~~ *individuals or entities*
22 who will bear those costs;

23 (2) a description of the initial and annual costs of implementing and
24 enforcing the proposed rules and regulations, including the estimated
25 amount of paperwork, and the state agencies, other governmental agencies
26 or other ~~persons~~ *individuals or entities* who will bear the costs;

27 (3) a description of the costs that would likely accrue if the proposed
28 rules and regulations are not adopted, the ~~persons~~ *individuals or entities*
29 who will bear the costs and those who will be affected by the failure to
30 adopt the rules and regulations; and

31 (4) a detailed statement of the data and methodology used in
32 estimating the costs used in the statement.

33 (f) In 2026, the legislative post audit committee shall direct the
34 legislative division of post audit to conduct an audit to study:

35 (1) The accuracy of economic impact statements submitted by state
36 agencies pursuant to this section for the immediately preceding seven
37 years;

38 (2) the impact the review by the director of the budget has had on the
39 accuracy of economic impact statements submitted by state agencies
40 pursuant to this section; and

41 (3) whether the \$1,000,000 ~~or \$3,000,000~~ cost figure is the
42 appropriate amount of economic impact to trigger the hearing procedure
43 required by K.S.A. 77-420(a), and amendments thereto.

1 Sec. 4. K.S.A. 2023 Supp. 77-420 is hereby amended to read as
2 follows: 77-420. (a) (1) ~~Except as further provided by this subsection,~~
3 Every rule and regulation proposed to be adopted by any state agency,
4 after being submitted to the secretary of administration and the attorney
5 general as required by this section, shall be submitted with the economic
6 impact statement for the rule and regulation required by K.S.A. 77-416,
7 and amendments thereto, to the director of the budget for review of the
8 accuracy and completeness of the agency's economic impact statement.
9 *The director of the budget shall review the agency's determination of the*
10 *amount of implementation and compliance costs reasonably expected to be*
11 *incurred by or passed along to businesses, local government and*
12 *individuals over the initial five-year period following adoption and shall*
13 *conduct an independent analysis to determine that the agency has*
14 *complied with the requirements for the economic impact statement set*
15 *forth in K.S.A. 77-416(b)(1)(A) and (b)(1)(C) and (e), and amendments*
16 *thereto. Every rule and regulation requiring approval by the director of the*
17 *budget shall be stamped as if approved, and the date of approval shall be*
18 *indicated.*

19 (2) ~~If the agency director independently determines that a proposed~~
20 ~~rule and regulation submitted or resubmitted by the agency will not result~~
21 ~~in implementation or compliance costs of more than \$1,000,000 from the~~
22 ~~effective date of this act through June 30, 2024, or more than \$3,000,000~~
23 ~~on and after July 1, 2024, for businesses, local government or individuals~~
24 ~~in any two-year the initial five-year period following adoption of such rule~~
25 ~~and regulation, the agency shall provide a copy of the economic impact~~
26 ~~statement to the director, but the director shall not be required to review or~~
27 ~~approve the proposed rule and regulation the director shall:~~

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

33 (B) *disapprove the rule and regulation if the economic impact*
34 *statement is incomplete or contains substantive inaccuracies.*

35 (3) ~~If the agency director of the budget determines that the proposed~~
36 ~~rule and regulation will result in implementation and compliance costs of~~
37 ~~more than \$1,000,000 from the effective date of this act through June 30,~~
38 ~~2024, or more than \$3,000,000 on and after July 1, 2024, for businesses,~~
39 ~~local government or individuals in any two-year the initial five-year period~~
40 ~~following adoption of such rule and regulation, the director of the budget~~
41 ~~shall:~~

42 (A) *Approve the proposed rule and regulation, if:*

43 (1) *The proposed rule and regulation has been ratified by the*

1 *legislature pursuant to section 1, and amendments thereto; and*

2 (2) the agency, prior to the submission or the resubmission of a rule
3 and regulation to the director, holds a public hearing and finds that the
4 costs of the proposed rule and regulation have been accurately determined
5 and are necessary for achieving legislative intent and the director, after an
6 independent analysis, concurs with the agency's findings and analysis and
7 approves the economic impact statement. *An agency's public hearing may*
8 *be held prior to or after ratification by the legislature; or*

9 (B) *disapprove the proposed rule and regulation if the economic*
10 *impact statement is incomplete or contains substantive inaccuracies.*

11 (4) If an agency is proposing a rule and regulation because of a
12 federal mandate as described in K.S.A. 77-416(b)(1)(B), and amendments
13 thereto, the agency shall provide a copy of the economic impact statement
14 to the director, but the director shall not be required to review or approve
15 the proposed rule and regulation, regardless of the implementation and
16 compliance cost of the proposed rule and regulation.

17 (5) For the purposes of this subsection, the implementation and
18 compliance cost shall be calculated from the effective date of the rule and
19 regulation.

20 (b) The director of the budget shall submit an annual report to the
21 legislature and to the joint committee on administrative rules and
22 regulations on the first day of the 2019 regular legislative session and
23 subsequent regular legislative sessions on all rules and regulations
24 approved *or denied* by the director. The report shall include the text of
25 each rule and regulation reviewed, the final economic impact statement
26 and a summary of the director's analysis supporting the decision to
27 approve *or reject* the rule and regulation. The director shall immediately
28 submit a separate report to the legislature, if in session, and the joint
29 committee on administrative rules and regulations upon the approval *or*
30 *denial* of a rule or regulation with costs determined to be greater than
31 \$1,000,000 ~~from the effective date of this act through June 30, 2024, or~~
32 ~~greater than \$3,000,000 on and after July 1, 2024,~~ for businesses, local
33 government or individuals over ~~any two-year~~ *the initial five-year* period
34 *following adoption of such rule and regulation.* The report shall include an
35 analysis of the agency's and the director's decisions with respect to the
36 necessity of the cost of the rule and regulation to achieve legislative intent.

37 (c) Every rule and regulation proposed to be adopted by any state
38 agency, before being submitted to the attorney general and the director of
39 the budget as required under this section, shall be submitted to the
40 secretary of administration for approval of its organization, style,
41 orthography and grammar subject to such requirements as to organization,
42 style, orthography and grammar as the secretary may adopt. Every rule and
43 regulation submitted to the secretary of administration under this

1 subsection shall be accompanied by a copy of any document ~~which~~ *that* is
2 adopted by reference by the rule and regulation. Every rule and regulation
3 approved by the secretary of administration under this subsection shall be
4 stamped as approved and the date of such approval shall be indicated
5 therein.

6 (d) Every rule and regulation proposed by any state agency that has
7 been approved by the secretary of administration as provided in subsection
8 (c), before being submitted to the director of the budget as required under
9 this section, shall be submitted to the attorney general for an opinion as to
10 the legality of the same, including whether the making of such rule and
11 regulation is within the authority conferred by law on the state agency. The
12 attorney general shall promptly furnish an opinion as to the legality of the
13 proposed rule and regulation so submitted. Every rule and regulation
14 submitted to the attorney general under this subsection shall be
15 accompanied by a copy of any document which is adopted by reference by
16 the rule and regulation. Every rule and regulation approved by the attorney
17 general under this subsection shall be stamped as approved and the date of
18 such approval shall be indicated therein.

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

21 ~~(1) The rule and regulation has complied with the provisions of~~
22 ~~subsection (a);~~

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

25 ~~(3)~~(2) the rule and regulation has been approved in writing by the
26 attorney general as to legality;

27 (3) *the rule and regulation has complied with the provisions of*
28 *subsection (a);*

29 (4) the rule and regulation has been formally adopted by the state
30 agency after it has ~~complied with the provisions of subsection (a),~~
31 *approved by* the secretary of administration and the attorney general *and*
32 *has complied with the provisions of subsection (a)* and is accompanied by
33 a certified or other formal statement of adoption when adoption is by an
34 executive officer of a state agency, or by a certified copy of the roll call
35 vote required for its adoption by K.S.A. 77-421, and amendments thereto,
36 when adoption is by a board, commission, authority or other similar body;

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

41 (6) *the rule and regulation has complied with the provisions of*
42 *section 1, and amendments thereto, if applicable; and*

43 ~~(6)~~(7) the rule and regulation to be filed is accompanied by a copy of

1 the environmental benefit statement required by K.S.A. 77-416, and
2 amendments thereto, if applicable.

3 Sec. 5. K.S.A. 2023 Supp. 77-415, 77-416 and 77-420 are hereby
4 repealed.

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