

HOUSE BILL No. 2411

By Committee on Federal and State Affairs

3-25

1 AN ACT concerning administrative rules and regulations; relating to
2 review by the director of the budget; amending K.S.A. 2018 Supp. 77-
3 416 and 77-420 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2018 Supp. 77-416 is hereby amended to read as
7 follows: 77-416. (a) Every state agency shall file with the secretary of state
8 every rule and regulation adopted by it and every amendment and
9 revocation thereof in the manner prescribed by the secretary of state. Each
10 rule and regulation shall include a citation to the statutory section or
11 sections being implemented or interpreted and a citation of the authority
12 pursuant to which it, or any part thereof, was adopted. Every rule and
13 regulation filed in the office of the secretary of state shall be accompanied
14 by a copy of the economic impact statement required by subsection (b) and
15 a copy of the environmental benefit statement if required by subsection
16 (d). A copy of any document adopted by reference in a rule and regulation
17 shall be available from the state agency that adopted the rule and
18 regulation upon request by any person interested therein. The state agency,
19 under the direction of the secretary of state, shall number each section with
20 a distinguishing number and, in making a compilation of the rules and
21 regulations, the sections shall be arranged in numerical order. A decimal
22 system of numbering shall be prohibited.

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

27 (A) An analysis, brief description, and cost and benefit quantification
28 of the proposed rules and regulations and what is intended to be
29 accomplished by their adoption. If the approach chosen by the Kansas
30 agency to address the policy issue is different from that utilized by
31 agencies of contiguous states or of the federal government, the economic
32 impact statement shall include an explanation of why the Kansas agency's
33 rule and regulation differs;

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

- 1 regulations exceed the requirements of applicable federal law;
- 2 (C) an analysis specifically addressing the following factors:
- 3 (i) The extent to which the rule and regulation will enhance or restrict
- 4 business activities and growth;
- 5 (ii) the economic effect, including a detailed quantification of
- 6 implementation and compliance costs, on the specific businesses, business
- 7 sectors, public utility ratepayers, individuals and local governmental units
- 8 that will be affected by the proposed rule and regulation and on the state
- 9 economy as a whole;
- 10 (iii) the businesses that would be directly affected by the proposed
- 11 rule and regulation;
- 12 (iv) the benefits of the proposed rule and regulation compared to the
- 13 cost;
- 14 (v) measures taken by the agency to minimize the cost and impact of
- 15 the proposed rule and regulation on business and economic development
- 16 within the state of Kansas, local government and individuals; *and*
- 17 (vi) an estimate, expressed as a single dollar figure, of the total annual
- 18 implementation and compliance costs that are reasonably expected to be
- 19 incurred by or passed along to businesses, local governmental units or
- 20 members of the public and a determination of whether those costs will
- 21 exceed \$3,000,000 over any two-year period; ~~and~~
- 22 ~~(vii) an estimate of the total implementation and compliance costs~~
- 23 ~~that are reasonably expected to be incurred by or passed along to~~
- 24 ~~businesses, local governmental units and individuals as a result of the~~
- 25 ~~proposed rule, expressed as a single dollar figure.~~
- 26 (2) The state agency shall consult with the league of Kansas
- 27 municipalities, Kansas association of counties and the Kansas association
- 28 of school boards, as appropriate, when preparing the economic impact
- 29 statement of a proposed rule and regulation which increases or decreases
- 30 revenues of cities, counties or school districts or imposes functions or
- 31 responsibilities on cities, counties or school districts that will increase their
- 32 expenditures or fiscal liability. The agency shall consult and solicit
- 33 information from businesses, business associations, local governmental
- 34 units, state agencies or institutions and members of the public that may be
- 35 affected by the proposed rule and regulation or that may provide relevant
- 36 information.
- 37 (3) As required pursuant to the provisions of K.S.A. 77-420(d), and
- 38 amendments thereto, the state agency shall reevaluate and, when
- 39 necessary, update the economic impact statement when directed to do so
- 40 by the director of the budget and, if approved by the director of the budget,
- 41 shall submit the revised economic impact statement at the time of filing a
- 42 rule and regulation with the secretary of state. If a public hearing was held
- 43 prior to the adoption of the rule and regulation, a state agency at the time

1 of filing a rule and regulation with the secretary of state shall include as a
2 part of the economic impact statement a statement specifying the time and
3 place at which the hearing was held and the attendance at the hearing. A
4 copy of the current economic impact statement shall be available from the
5 state agency upon request by any party interested therein.

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

27 (d) At the time of drafting a proposed environmental rule and
28 regulation or amendment to an existing environmental rule and regulation,
29 the state agency shall consider the environmental benefit of such proposed
30 rule and regulation or amendment. Prior to giving notice of a hearing on a
31 proposed rule and regulation, the state agency shall prepare an
32 environmental benefit statement that shall include a description of the need
33 for and the environmental benefits that will likely accrue as the result of
34 the proposed rule and regulation or amendment. The description shall
35 summarize, when applicable, research indicating the level of risk to the
36 public health or the environment being removed or controlled by the
37 proposed rule and regulation or amendment. When specific contaminants
38 are to be controlled by the proposed rule and regulation or amendment, the
39 description shall indicate the level at which the contaminants are
40 considered harmful according to currently available research. The state
41 agency may consult with other state agencies when preparing the
42 environmental benefit statement. The state agency shall reevaluate and,
43 when necessary, update the statement at the time of filing a rule and

1 regulation with the secretary of state. A copy of the current environmental
2 benefit statement shall be available from the state agency upon request by
3 any party interested therein.

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

6 (1) A description of the capital and annual costs of compliance with
7 the proposed rules and regulations, and the persons who will bear those
8 costs;

9 (2) a description of the initial and annual costs of implementing and
10 enforcing the proposed rules and regulations, including the estimated
11 amount of paperwork, and the state agencies, other governmental agencies
12 or other persons or entities who will bear the costs;

13 (3) a description of the costs that would likely accrue if the proposed
14 rules and regulations are not adopted, the persons who will bear the costs
15 and those who will be affected by the failure to adopt the rules and
16 regulations; and

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

19 (f) In 2021, the legislative post audit committee shall direct the
20 legislative division of post audit to conduct an audit to study:

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

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

27 (3) whether the \$3,000,000 cost figure is the appropriate amount of
28 economic impact to trigger the hearing procedure required by K.S.A. 77-
29 420(a), and amendments thereto.

30 Sec. 2. K.S.A. 2018 Supp. 77-420 is hereby amended to read as
31 follows: 77-420. (a) (1) *Except as further provided by this subsection,*
32 every rule and regulation proposed to be adopted by any state agency,
33 before being submitted to the secretary of administration and the attorney
34 general as required by this section, shall be submitted with the economic
35 impact statement for the rule and regulation required by K.S.A. 77-416,
36 and amendments thereto, to the director of the budget for review of the
37 accuracy and completeness of the agency's economic impact statement.
38 ~~The director of the budget shall make an independent determination of the~~
39 ~~amount of implementation and compliance costs reasonably expected to be~~
40 ~~incurred by or passed along to businesses, local government and~~
41 ~~individuals over any two-year period as a result of the proposed rule and~~
42 ~~regulation and shall conduct an independent analysis of the factors set~~
43 ~~forth in K.S.A. 77-416(b)(1)(A) and (C) and (e), and amendments thereto.~~

1 Every rule and regulation ~~approved~~ *requiring approval* by the director of
2 the budget shall be stamped as approved, and the date of approval shall be
3 indicated.

4 (2) If the ~~director independently~~ *agency* determines that a proposed
5 rule and regulation submitted or resubmitted by the agency will not result
6 in implementation or compliance costs of more than \$3,000,000 for
7 businesses, local government or individuals in any two-year period, the
8 ~~director shall:~~

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

14 ~~(B) disapprove the rule and regulation~~ *agency shall provide a copy of*
15 *the economic impact statement to the director, but the director shall not be*
16 *required to review or approve the proposed rule and regulation.*

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

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

28 ~~(B) disapprove the proposed rule and regulation.~~

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

35 (5) *For the purposes of this subsection, the implementation and*
36 *compliance cost shall be calculated from the effective date of the rule and*
37 *regulation by subtracting the estimated cost savings from the total*
38 *implementation and compliance cost, resulting in the net implementation*
39 *and compliance cost.*

40 (b) The director of the budget shall submit an annual report to the
41 legislature and to the joint committee on administrative rules and
42 regulations on the first day of the 2019 regular legislative session and
43 subsequent regular legislative sessions on all rules and regulations

1 approved or denied by the director. The report shall include the text of
2 each rule and regulation reviewed, the final economic impact statement
3 and a summary of the director's analysis supporting the decision to
4 approve or reject the rule and regulation. The director shall immediately
5 submit a separate report to the legislature, if in session, and the joint
6 committee on administrative rules and regulations upon the approval or
7 denial of a rule or regulation with costs determined to be greater than
8 \$3,000,000 for businesses, local government or individuals over any two-
9 year period. The report shall include an analysis of the agency's and the
10 director's decisions with respect to the necessity of the cost of the rule and
11 regulation to achieve legislative intent.

12 (c) Every rule and regulation proposed to be adopted by any state
13 agency that has been approved by the director of the budget pursuant to
14 *complied with* the provisions of subsection (a), before being submitted to
15 the attorney general under this section, shall be submitted to the secretary
16 of administration for approval of its organization, style, orthography and
17 grammar subject to such requirements as to organization, style,
18 orthography and grammar as the secretary may adopt. Every rule and
19 regulation submitted to the secretary of administration under this
20 subsection shall be accompanied by a copy of any document which is
21 adopted by reference by the rule and regulation. Every rule and regulation
22 approved by the secretary of administration under this subsection shall be
23 stamped as approved and the date of such approval shall be indicated
24 therein.

25 (d) Every rule and regulation proposed by any state agency that has
26 *complied with the provisions of subsection (a) and has* been approved by
27 ~~the director of the budget and~~ the secretary of administration as provided
28 ~~in subsections (a) and subsection (c)~~ before being adopted or filed shall be
29 submitted to the attorney general for an opinion as to the legality of the
30 same, including whether the making of such rule and regulation is within
31 the authority conferred by law on the state agency. The attorney general
32 shall promptly furnish an opinion as to the legality of the proposed rule
33 and regulation so submitted. Every rule and regulation submitted to the
34 attorney general under this subsection shall be accompanied by a copy of
35 any document which is adopted by reference by the rule and regulation.
36 Every rule and regulation approved by the attorney general under this
37 subsection shall be stamped as approved and the date of such approval
38 shall be indicated therein.

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

41 (1) The rule and regulation has ~~been approved by the director of the~~
42 ~~budget~~ *complied with the provisions of subsection (a)*;

43 (2) the organization, style, orthography and grammar have been

1 approved by the secretary of administration;

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

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

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

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

19 Sec. 3. K.S.A. 2018 Supp. 77-416 and 77-420 are hereby repealed.

20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.