

HOUSE BILL No. 2648

AN ACT concerning administrative rules and regulations; requirements for adoption of rules and regulations; providing that agency adjudications shall not be used to establish policies that are rules governing future private conduct that have the force of law; relating to economic impact statements; requiring legislative ratification for certain rules and regulations; requiring the director of the budget to review an agency's determination of implementation and compliance costs and disapprove proposed rules and regulations with incomplete or inaccurate economic impact statements; removing a requirement that legislative post audit conduct an audit in 2026 pertaining to economic impact statements; amending K.S.A. 2023 Supp. 77-415, 77-416 and 77-420 and repealing the existing sections.

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

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

(b) If a state agency is prohibited from adopting a proposed rule and regulation under subsection (a), such agency may modify the proposed rule and regulation to lower the implementation and compliance costs of the proposed rule and regulation. Any such modification shall be germane to the subject of the proposed rule and regulation. If a proposed rule and regulation is modified pursuant this subsection, the state agency shall prepare a revised economic impact statement pursuant to K.S.A. 77-416(b)(3), and amendments thereto. A state agency may adopt such modified rule and regulation if the revised economic impact statement indicates that \$1,000,000 or more in implementation and compliance costs are not reasonably expected to be incurred by or passed along to businesses, local governmental units and individuals as a result of the proposed rule and regulation over the initial five-year period following adoption of such proposed rule and regulation.

(c) The provisions of this section shall not apply to temporary rules and regulations adopted pursuant to K.S.A. 77-722, and amendments thereto, rules and regulations proposed because of a federal mandate as described in K.S.A. 77-416(b)(1)(B), and amendments thereto, or rules and regulations adopted pursuant to K.S.A. 2-3710, and amendments thereto.

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

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

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

(2) Notwithstanding the provisions of this section:

(A) An agency may bind parties, establish policies, and interpret statutes or regulations by order in an adjudication under the Kansas

administrative procedure act or other procedures required by law, except that *such policies shall not include the establishment of rules governing future private conduct that have the force of law* and such order shall not be used as precedent in any subsequent adjudication against a person who was not a party to the original adjudication unless the order is:

- (i) Designated by the agency as precedent;
- (ii) not overruled by a court or later adjudication; and
- (iii) disseminated to the public in one of the following ways:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Environmental rule and regulation" means:

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

environment; or

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

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

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

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

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

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

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

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

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

(A) An analysis, brief description, and cost and benefit quantification of the proposed rules and regulations and what is intended to be accomplished by their adoption. 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;

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

(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; and

(vi) an estimate 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~~ *individuals* and a determination of whether those costs will exceed \$1,000,000 ~~over any two-year period from the effective date of this act through June 30, 2024, or exceed \$3,000,000 over any two-year period on and after July 1, 2024 following adoption of the proposed rule and regulation.~~ *the initial five-year period*.

(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 that will increase their expenditures or fiscal liability. 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.

(3) As required pursuant to the provisions of K.S.A. 77-420(d), and amendments thereto, the state agency shall reevaluate and, when necessary, update the economic impact statement 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 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.

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

implementing state agency, local government or by ~~members of the public~~ *individuals*.

(c) Pursuant to the provisions of K.S.A. 77-420, and amendments thereto, the director of the budget shall review the economic impact statement prepared by any state agency and shall prepare a supplemental or revised statement 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). 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~~ *individuals* subject thereto, small employers and the general public. If, after careful investigation, it is determined that no dollar estimate is possible, the statement shall set forth the reasons why no dollar estimate can be given. Every state agency is directed to cooperate with the division of the budget in the preparation of any statement pursuant to this subsection when, and to the extent, requested by the director of the budget. 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.

(d) At the time of drafting a proposed environmental rule and regulation or amendment to an existing environmental rule and regulation, the state agency shall consider the environmental benefit of such proposed rule and regulation or amendment. Prior to giving notice of a hearing on a proposed rule and regulation, the state agency shall prepare an environmental benefit statement that shall include a description of the need for and the environmental benefits that will likely accrue as the result of the proposed rule and regulation or amendment. The description shall summarize, when applicable, research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rule and regulation or amendment. When specific contaminants are to be controlled by the proposed rule and regulation or amendment, the description shall indicate the level at which the contaminants are considered harmful according to currently available research. The state agency may consult with other state agencies when preparing the environmental benefit statement. 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. A copy of the current environmental benefit statement shall be available from the state agency upon request by any party interested therein.

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

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

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

(3) a description of the costs that would likely accrue if the proposed rules and regulations are not adopted, the ~~persons~~ *individuals*

or entities who will bear the costs and those who will be affected by the failure to adopt the rules and regulations; and

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

~~(f) In 2026, 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 seven 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 \$1,000,000 or \$3,000,000 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.~~

Sec. 4. K.S.A. 2023 Supp. 77-420 is hereby amended to read as follows: 77-420. (a) (1) ~~Except as further provided by this subsection,~~ Every rule and regulation proposed to be adopted by any state agency, after 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 review the agency's 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 the initial five-year period following adoption and shall conduct an independent analysis to determine that the agency has complied with the requirements for the economic impact statement set forth in K.S.A. 77-416(b)(1)(A) and (b)(1)(C) and (e), and amendments thereto.* Every rule and regulation requiring approval by the director of the budget shall be stamped ~~as if~~ approved, and the date of approval shall be indicated.

(2) If the ~~agency director~~ *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 \$1,000,000 ~~from the effective date of this act through June 30, 2024, or more than \$3,000,000 on and after July 1, 2024,~~ for businesses, local government or individuals ~~in any two-year~~ *the initial five-year period following adoption of such rule and regulation,* ~~the agency shall provide a copy of the economic impact statement to the director, but the director shall not be required to review or approve the proposed rule and regulation~~ *the director shall:*

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

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

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

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

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

legislature pursuant to section 1, and amendments thereto; and

(2) 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. *An agency's public hearing may be held prior to or after ratification by the legislature; or*

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

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

(5) For the purposes of this subsection, the implementation and compliance cost shall be calculated from the effective date of the 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 \$1,000,000 ~~from the effective date of this act through June 30, 2024, or greater than \$3,000,000 on and after July 1, 2024,~~ for businesses, local government or individuals over ~~any two-year~~ *the initial five-year period following adoption of such rule and regulation.* 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, before being submitted to the attorney general and the director of the budget as required 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 shall be accompanied by a copy of any document ~~which~~ *that* is adopted by reference by the rule and regulation. Every rule and regulation approved by the secretary of administration under this subsection shall be stamped as approved and the date of such approval shall be indicated therein.

(d) Every rule and regulation proposed by any state agency that has been approved by the secretary of administration as provided in subsection (c), before being submitted to the director of the budget as required under this section, 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 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 shall be stamped as approved and the date of such approval shall be indicated therein.

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

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

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

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

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

(4) the rule and regulation has been formally adopted by the state agency after it has ~~complied with the provisions of subsection (a);~~ *approved* by the secretary of administration and the attorney general *and has complied with the provisions of subsection (a)* 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;

(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 and* complies with the provisions of subsection (a);

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

~~(6)~~(7) 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.

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

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.