

SESSION OF 2018

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2280**

As Agreed to May 1, 2018

Brief*

HB 2280, as amended, would revise the Rules and Regulations Filing Act pertaining to economic impact statements, new authority granted to the Director of the Budget (Director) to review and approve proposed rules and regulations, the composition of the State Rules and Regulations Board (State Board), the composition and powers of the Joint Committee on Administrative Rules and Regulations (Joint Committee), and an evaluation that would be conducted by the Legislative Division of Post Audit regarding the implementation of the new provisions contained in the bill.

Economic Impact Statements

The bill would revise the contents of the economic impact statement that accompanies a state agency's proposed rule and regulation or, if applicable, the proposed amendment to a current rule and regulation. Currently, an economic impact statement includes a description of:

- The proposed rule and regulation;
- The extent to which the proposed rule and regulation is required by federal law;
- The cost, including the government agencies and other persons who will bear the expense; and

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- The less intrusive or less costly methods to achieve the same end and the reasons for rejecting those methods.

The bill would delete references to the descriptions of cost and alternative means and require instead an economic impact statement to include quantified cost-benefit analyses that would be performed by the state agency and the Director. If a state agency's proposed rule and regulation chose to address a policy issue differently than what an agency of a neighboring state or the federal government adopted, the state agency would be required to include an explanation as to why the Kansas policy would differ.

The economic impact statement would include an analysis that would address the following factors:

- The extent to which the rule and regulation would enhance or restrict business activities and growth;
- The economic effect on the Kansas economy, including specific businesses, business sectors, public utility ratepayers, individuals, and local units of government;
- The businesses that would be affected directly;
- The benefits compared to the cost;
- Measures taken by the agency to minimize the cost and impact on businesses and economic development within the state, local units of government, and individuals;
- An estimate of the total annual implementation and compliance costs, which would be expressed as a single dollar amount, that would be expected to be absorbed by businesses, local units of government, or members of the public, and which would include an agency determination of whether these costs

would exceed \$3.0 million over a two-year period;
and

- An estimate of the total implementation and compliance costs, which would be expressed as a single dollar amount, that would be expected to be absorbed by businesses, local units of government, and individuals.

In addition, the bill would require state agencies to consult and solicit information from businesses, business associations, local governmental units, state agencies or institutions, and members of the public who may be affected by the proposed rules and regulations or who may provide relevant information.

Approval Process by the Director of the Budget

Prior to an agency submitting a proposed rule and regulation to the Secretary of Administration (Secretary) and the Attorney General, as required by law, the agency would send the proposed rule and regulation to the Director, who would conduct an independent analysis, using the factors specified above, to determine whether the costs incurred by non-state government entities would be \$3.0 million or less over a two-year period. The Director would approve the proposed rule and regulation for submission to the Secretary and Attorney General if it would be determined that the impact would be less than or equal to \$3.0 million. If the impact would exceed \$3.0 million, the Director could either disapprove the proposed rule and regulation or approve it, provided the agency had conducted a public hearing prior to submitting the proposed rule and regulation and found the costs have been accurately determined and would be necessary for achieving legislative intent.

Starting with the 2019 Legislative Session, the Director would submit an annual report to the Legislature and the Joint Committee that would include the text of each rule and

regulation reviewed, the final economic impact statement, and a summary of the analysis supporting the Director's decision. If the Legislature is in session, the Director would submit a separate report to the Legislature and the Joint Committee regarding the Director's decision involving a proposed rule and regulation determined to cost more than \$3.0 million over a two-year period.

Composition of the State Rules and Regulations Board

The bill would amend statutes governing the appointment of members to the State Board. The bill would add a member of the minority party to membership of the State Board, along with the chairperson of the Senate Committee on Ways and Means (in even-numbered years) or the chairperson of the House Committee on Appropriations (in odd-numbered years). Under the provisions of the bill, the new minority party member of the State Board would be either the ranking member of Joint Committee or a member of the Joint Committee appointed by the minority leader of the same legislative chamber as the Joint Committee chairperson.

Composition and Powers of the Joint Committee on Administrative Rules and Regulations

A ranking minority member would be designated for the Joint Committee by the minority leader of the Senate or House, as would be applicable, so that the chairperson and the ranking minority member would be from the same chamber. Following each of its meetings where comments, recommendations, and concerns are expressed while reviewing proposed rules and regulations, the Joint Committee would issue a report to the Legislature. The report would be made available to each agency that had proposed rules and regulations. If it would be impractical to finalize a report in time for an agency's public hearing on the proposed rules and regulations, a preliminary report would be made

available to the agency. In that case, the preliminary report would be made part of the final report, and it would be made available to each agency.

Evaluation

In 2021, the Legislative Post Audit Committee would direct the Legislative Division of Post Audit to conduct an audit that would study:

- The accuracy of economic impact statements submitted by state agencies for the preceding seven years;
- The impact the Director's review has had on the accuracy of economic impact statements; and
- Whether the \$3.0 million threshold would be the appropriate level to trigger an additional public hearing.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee removed the contents of HB 2280 and inserted the contents of HB 2526, as amended by the Senate Committee on Federal and State Affairs.

The Conference Committee agreed to add two additional members to the State Board, including:

- A minority party member, who serves as either the ranking minority member of the Joint Committee or a member of the Joint Committee appointed by the

minority leader of the same legislative chamber as the Joint Committee chairperson;

- On even-numbered years, the chairperson of the Senate Committee on Ways and Means; and
- On odd-numbered years, the chairperson of the House Committee on Appropriations.

Background

The second Conference Committee removed the contents of HB 2280, which addressed the composition and duties of the Joint Committee, and added the contents of HB 2526, as amended by the Senate Committee on Federal and State Affairs.

HB 2526

The bill was introduced by the Joint Committee.

House Action

In the House Committee on Commerce, Labor and Economic Development hearing, Representatives Carmichael and Highland, who both serve on the Joint Committee, spoke in favor of the bill. They said the legislation would clarify and strengthen the Legislature's authority over the promulgation process for both permanent and temporary rules and regulations. A representative of the Kansas Chamber spoke in favor of the bill, suggesting an amendment that would require a more thorough economic impact statement and suspend implementation of a proposed rule and regulation costing \$3.0 million or more without prior legislation enacted specifically to authorize the rule and regulation. An attorney, speaking as an individual and not representing any client, spoke in favor of the bill and supported the amendment suggested above, explaining that while the Department of

Administration has a manual for the production of economic impact statements, agencies either do not follow the manual's guidelines or the agencies' analyses are vague.

No other testimony was provided.

The House Committee amended the bill to:

- Authorize the Director to approve proposed rules and regulations [*Note:* The Conference Committee retained this amendment.];
- Authorize quantified cost-benefit analyses, addressing several factors, to be conducted by the state agency and the Director [*Note:* The Conference Committee retained this amendment.];
- Require an additional public hearing if the cost of a proposed rule and regulation is more than \$5.0 million over two years [*Note:* The Conference Committee agreed to the Senate position of \$3.0 million.]; and
- Replace the proposed language, which would have allowed the Joint Committee to communicate its comments, concerns, recommendations, and approval or disapproval directly with state agencies, with a provision requiring the Joint Committee to report its comments, recommendations, and concerns to the Legislature and make the report available to the respective state agency [*Note:* The Conference Committee retained this amendment.].

Senate Action

In the Senate Committee on Federal and State Affairs hearing, proponent testimony was provided by a representative of the Kansas Chamber, a representative of the Kansas Agribusiness Retailers Association, Kansas Grain

and Feed Association, and the Renew Kansas Association and a private citizen. The proponents generally stated the bill would strengthen legislative oversight during the rulemaking process to ensure state agencies are conducting thorough research on the economic impact statements required by law. Written-only proponent testimony was submitted by the Kansas Soybean Association. No other testimony was provided.

The Senate Committee amended the bill to:

- Reduce the economic impact cap for a proposed rule and regulation from \$5.0 million to \$3.0 million over two years when an additional public hearing would be required [*Note:* The Conference Committee retained this amendment.];
- Remove the ranking minority member of the State Rules and Regulations Board [*Note:* The Conference Committee did not retain this amendment.]; and
- Change the effective date to upon publication in the *Kansas Register* [*Note:* The Conference Committee retained this amendment.].

Fiscal Note

According to the fiscal note prepared by the Division of the Budget on HB 2526, as introduced, in consultation with Legislative Administrative Services and the Office of the Secretary of State, the bill would increase expenditures by \$2,272 from the State General Fund for FY 2019 for meetings of the State Rules and Regulations Board (State Board) due to the inclusion of another legislator on the State Board's membership. The fiscal note assumes the State Board would meet four times per year and the salary, subsistence, and mileage rates for FY 2019 would apply. As to the filing requirements with the Secretary of State, that office indicates the bill could be accomplished within existing resources. An

updated fiscal note on HB 2526, as amended, was not known at the time the House Committee took action.

administrative rules and regulations; Division of the Budget; business; Joint Committee on Administrative Rules and Regulations; State Rules and Regulations Board; audit; economic impact

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