

As Amended by House Committee

Session of 2024

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; **providing that agency**
3 **adjudications shall not be used to establish policies that are rules**
4 **governing future private conduct that have the force of law;** relating
5 to economic impact statements; requiring legislative ratification for
6 certain rules and regulations; requiring the director of the budget to
7 review an agency's determination of implementation and compliance
8 costs and disapprove proposed rules and regulations with incomplete or
9 inaccurate economic impact statements; **removing a requirement that**
10 **legislative post audit conduct an audit in 2026 pertaining to**
11 **economic impact statements;** amending K.S.A. 2023 Supp. 77-415,
12 77-416 and 77-420 and repealing the existing sections.
13

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

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

31 (b) If a state agency is prohibited from adopting a proposed rule and
32 regulation under subsection (a), such agency may modify the proposed
33 rule and regulation to lower the implementation and compliance costs of
34 the proposed rule and regulation. Any such modification shall be germane
35 to the subject of the proposed rule and regulation. If a proposed rule and

1 regulation is modified pursuant this subsection, the state agency shall
2 prepare a revised economic impact statement pursuant to K.S.A. 77-416(b)
3 (3), and amendments thereto. A state agency may adopt such modified rule
4 and regulation if the revised economic impact statement indicates that
5 \$1,000,000 or more in implementation and compliance costs are not
6 reasonably expected to be incurred by or passed along to businesses, local
7 governmental units and individuals as a result of the proposed rule and
8 regulation over the initial five-year period following adoption of such
9 proposed rule and regulation.

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

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

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

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

28 (2) Notwithstanding the provisions of this section:

29 (A) An agency may bind parties, establish policies, and interpret
30 statutes or regulations by order in an adjudication under the Kansas
31 administrative procedure act or other procedures required by law, except
32 that **such policies shall not include the establishment of rules governing**
33 **future private conduct that have the force of law and** such order shall
34 not be used as precedent in any subsequent adjudication against a person
35 who was not a party to the original adjudication unless the order is:

36 (i) Designated by the agency as precedent;

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

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

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

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

43 (c) being made available to the public in such other manner as may be

1 prescribed by the secretary of state.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (B) a rule and regulation adopted by the secretary of wildlife and
43 parks concerning threatened or endangered species of wildlife as defined

1 in K.S.A. 32-958, and amendments thereto.

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

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

12 ~~(4)~~(5) "Rule and regulation," "rule;" and "regulation" means a
13 standard, requirement or other policy of general application that has the
14 force and effect of law, including amendments or revocations thereof,
15 issued or adopted by a state agency to implement or interpret legislation.

16 ~~(5)~~(6) "Rulemaking" means the same as defined in K.S.A. 77-602,
17 and amendments thereto.

18 ~~(6)~~(7) "Small employer" means any person, firm, corporation,
19 partnership or association that employs not more than 50 employees, the
20 majority of whom are employed within this state.

21 ~~(7)~~(8) "State agency" means any officer, department, bureau, division,
22 board, authority, agency, commission or institution of this state, except the
23 judicial and legislative branches, which is authorized by law to promulgate
24 rules and regulations concerning the administration, enforcement or
25 interpretation of any law of this state.

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

43 (b) (1) At the time of drafting a proposed rule and regulation or

1 amendment to an existing rule and regulation, the state agency shall
2 consider the economic impact of the proposed rule and regulation. The
3 state agency shall prepare an economic impact statement that shall include:

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

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

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

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

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

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

25 (iv) the benefits of the proposed rule and regulation compared to the
26 cost;

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

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

38 (2) The state agency shall consult with the league of Kansas
39 municipalities, Kansas association of counties and the Kansas association
40 of school boards, as appropriate, when preparing the economic impact
41 statement of a proposed rule and regulation which increases or decreases
42 revenues of cities, counties or school districts or imposes functions or
43 responsibilities on cities, counties or school districts that will increase their

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

6 (3) As required pursuant to the provisions of K.S.A. 77-420(d), and
7 amendments thereto, the state agency shall reevaluate and, when
8 necessary, update the economic impact statement when directed to do so
9 by the director of the budget and, if approved by the director of the budget,
10 shall submit the revised economic impact statement at the time of filing a
11 rule and regulation with the secretary of state. If a public hearing was held
12 prior to the adoption of the rule and regulation, a state agency at the time
13 of filing a rule and regulation with the secretary of state shall include as a
14 part of the economic impact statement a statement specifying the time and
15 place at which the hearing was held and the attendance at the hearing. A
16 copy of the current economic impact statement shall be available from the
17 state agency upon request by any party interested therein.

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

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

1 rule and regulation. No agency shall submit a rule and regulation to the
2 secretary of state for filing before receiving the approval of the director of
3 the budget as provided in this subsection and K.S.A. 77-420, and
4 amendments thereto.

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

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

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

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

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

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

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

42 ~~(1) The accuracy of economic impact statements submitted by state~~
43 ~~agencies pursuant to this section for the immediately preceding seven~~

1 years;

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

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

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

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

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

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

42 (3) If the ~~agency~~ director of the budget determines that the proposed
43 rule and regulation will result in implementation and compliance costs of

1 more than \$1,000,000 ~~from the effective date of this act through June 30,~~
2 ~~2024, or more than \$3,000,000 on and after July 1, 2024,~~ for businesses,
3 local government or individuals in ~~any two-year~~ *the initial five-year* period
4 *following adoption of such rule and regulation*, the director of the budget
5 shall:

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

7 (1) *The proposed rule and regulation has been ratified by the*
8 *legislature pursuant to section 1, and amendments thereto; and*

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

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

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

24 (5) For the purposes of this subsection, the implementation and
25 compliance cost shall be calculated from the effective date of the rule and
26 regulation.

27 (b) The director of the budget shall submit an annual report to the
28 legislature and to the joint committee on administrative rules and
29 regulations on the first day of the 2019 regular legislative session and
30 subsequent regular legislative sessions on all rules and regulations
31 approved *or denied* by the director. The report shall include the text of
32 each rule and regulation reviewed, the final economic impact statement
33 and a summary of the director's analysis supporting the decision to
34 approve *or reject* the rule and regulation. The director shall immediately
35 submit a separate report to the legislature, if in session, and the joint
36 committee on administrative rules and regulations upon the approval *or*
37 *denial* of a rule or regulation with costs determined to be greater than
38 ~~\$1,000,000 from the effective date of this act through June 30, 2024, or~~
39 ~~greater than \$3,000,000 on and after July 1, 2024,~~ for businesses, local
40 government or individuals over ~~any two-year~~ *the initial five-year* period
41 *following adoption of such rule and regulation*. The report shall include an
42 analysis of the agency's and the director's decisions with respect to the
43 necessity of the cost of the rule and regulation to achieve legislative intent.

1 (c) Every rule and regulation proposed to be adopted by any state
2 agency, before being submitted to the attorney general and the director of
3 the budget as required under this section, shall be submitted to the
4 secretary of administration for approval of its organization, style,
5 orthography and grammar subject to such requirements as to organization,
6 style, orthography and grammar as the secretary may adopt. Every rule and
7 regulation submitted to the secretary of administration under this
8 subsection shall be accompanied by a copy of any document ~~which~~ *that* is
9 adopted by reference by the rule and regulation. Every rule and regulation
10 approved by the secretary of administration under this subsection shall be
11 stamped as approved and the date of such approval shall be indicated
12 therein.

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

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

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

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

32 ~~(3)(2) the rule and regulation has been approved in writing by the~~
33 ~~attorney general as to legality;~~

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

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

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

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

7 ~~(6)~~(7) the rule and regulation to be filed is accompanied by a copy of
8 the environmental benefit statement required by K.S.A. 77-416, and
9 amendments thereto, if applicable.

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

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