

STATE OF KANSAS

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JOINT COMMITTEE ON  
ADMINISTRATIVE RULES AND REGULATIONS

February 5, 2018

Hon. Les Mason, Chair  
Kansas House Committee on Commerce,  
Labor and Economic Development  
Kansas Statehouse, Room 521A-E  
Topeka, Kansas 66612

Re: HB 2526

Dear Chairman Mason:

Please accept this correspondence as my written testimony in support of HB 2526. I also request the opportunity to address the committee at the hearing on the bill.

During the past session, I was privileged to serve as the Ranking Member of the Joint Legislative Committee on Rules and Regulations. While the work of the committee is often tedious, it has been a true pleasure to serve under then Chairman Highland and Vice-Chair Schmidt. The committee works diligently and I can truthfully say the committee does its work without partisanship and accomplishes its work in a collegial fashion. If only the same could be said for every committee in the Statehouse.

I rise in support of HB 2526. The bill does three things (aside from technical and grammatical changes), and I will attempt to address each of them separately below.

Section One of the bill adds an additional formal requirement to existing law requiring the agency to provide information regarding businesses affected by the proposed rule or regulation, the benefits of the same, and measures taken to minimize the impact of the proposal. Although I do not recall this provision being included in the committee's "conceptual" bill, it codifies current best practice, and I support its formal inclusion in the statute.

Section Two of the bill is the heart of the committee's recommendation. At present, state agencies may promulgate "temporary" rules and regulations, to be effective until such time as the formal rule making process, i.e. hearing by the joint committee and public hearing and comment, can be completed. These temporary rules or regulations must be approved by the state rules and regulations board, which meets more frequently than the joint committee. At present the board consists of a representative of the attorney general, a representative of the secretary of state, a representative of the department of administration (interestingly an agency of the executive branch which also ultimately proposes the regulation or rule), and typically the chair and vice-chair of the Joint Committee on Rules and Regulations. HB 2526 adds the ranking member of the committee to the board. While some may think the goal of the legislation is to strengthen the minority party, in practice, the disputes which occasionally

arise are not partisan, but typically represent tension between the legislative and executive branches of government. Moreover, historically, while Kansas governors come from both parties, or perhaps in the distant future might include an "independent" candidate, inclusion of a member of the minority from the legislative committee on the board helps achieve balance between the executive and legislative branches, irrespective of whatever party the governor may belong. At present, this board is dominated by representatives of the executive branch, which under the bill will still constitute the majority, but by addition of an additional legislative member we can more closely balance the power of the executive and legislative branches.

Section Three of the bill provides the joint committee may not only direct its comments and recommendations to the agency, as is the current practice, but may also communicate to the agency its approval or disapproval of any proposed rule or regulation. At present, should an executive agency disregard the committee's recommendations, and/or disregard the comments received from the public at a public hearing, the legislature is powerless to disapprove the rule or regulation, absent formal legislative action and approval by the governor, or in extreme cases, over-ride of a gubernatorial veto. While the language of the bill is somewhat vague regarding the effect of the committee's communication to the agency of the committee's disapproval, i.e. does such communication prevent the adoption of the rule or regulation by the agency, the bill clearly allows the committee to place the agency on notice of the error of its ways.

A concern regarding this modification to existing law bears mention and consideration by this committee. In *State, ex. rel. Stephan v. Kansas House of Representatives, et. al.*, 236 Kan. 45 (1984) our Supreme Court held the power to adopt rules and regulations is essentially executive or administrative in nature and once the legislature has delegated by law rule making authority to the executive branch it may only revoke that authority by proper enactment of another statute revoking that delegation of authority. 236 Kan. at 60. The statute in question in *ex. rel. Stephan* allowed revocation of a rule or regulation by way of joint legislative resolution, without gubernatorial signature or veto over-ride. There, the court disapproved *post facto* invalidation of a regulation, following its adoption, absent legislative action and gubernatorial approval. The instant bill, I would argue, is different in its effect. HB 2526 represents a reservation of the legislature's delegation of authority to the executive, and arguably provides the action of the executive in promulgating a proposed rule is still subject to legislative power, through the approval or disapproval of the proposed rule or regulation by the joint committee, prior to the adoption of the rule or regulation by the agency.

I wish to caution the committee, however, a strong argument to the contrary may be made.

For the reasons set forth above, I strongly urge the committee to recommend HB 2526 favorably for passage.

Sincerely,



John Carmichael  
Kansas State Representative  
District 92