



**House Committee on Commerce, Labor and Economic Development
Neutral Testimony on House Bill 2526
Presented by Eric Stafford, Vice President of Government Affairs**

Monday, February 5, 2018

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber appreciates the opportunity to testify on House Bill 2526 which proposes to amend the rules and regulations act. We are neutral on the bill as it currently stands but propose additional language for consideration by this committee. If our amendment is adopted, we would become a proponent of the bill.

In 2017, the state of Wisconsin passed Act 57, known as the REINS Act, or Wisconsin Regulations from the Executive in Need of Scrutiny Act. Wisconsin's statute books trailed Kansas in some ways relative to legislative oversight and public input during the rule and reg process, and the passage of Act 57 was a significant victory for their state's business climate.

The REINS Act offered significant protections against excessive regulations by authorizing the ability for their legislature to stop implementation of rules and regulations. We are here today proposing language which is a hybrid of what Wisconsin passed, and existing Kansas law.

HB 2526 proposes to add new language to statute strengthening language of the cost analysis by requiring the state agency to provide a "description of businesses that would be directly affected by the proposed rules and regulations....". We view this as a positive change to existing law.

Our amendment offers suggested changes to K.S.A. 44-716, and 44-726 by adopting some of the provisions of Wisconsin's law. Most notably, if a proposed rule or regulation is found to have an economic impact of more than \$3 million (Wisconsin's law states \$10 million) over a two-year period, that rule is suspended unless the legislature passes a bill authorizing the implementation of that rule. This provision is the key piece for Act 57 by adding teeth to the legislature's ability to control excessive regulations released by the executive branch.

Additionally, our amendment proposes changes to the economic impact analysis requirement in existing law. Today, this requirement is loosely followed. We are suggesting language from Wisconsin's law which directs the agency to reach out to trade associations, businesses, local government units and individuals for input on their proposed changes. We also propose the agency to report on how our neighboring states have addressed this issue, if at all, and if this rule differs than those states, why did the agency choose a different approach.

In closing, we view our proposed amendment as a positive step toward protecting Kansas businesses against burdensome rules and regulations by strengthening legislative oversight. We appreciate the opportunity to testify on House Bill 2526 and I am happy to answer questions at the appropriate time.

77-416. Filing rules and regulations; numbering; citation of statutory authority; economic impact statement; documents adopted by reference; review of economic impact statement by director of the budget; environmental benefit and economic impact statement; authority of secretary of state. (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 which adopted the rule and regulation upon request by any person 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 ~~conduct an economic impact analysis of such proposed rule or regulation. Consider the economic impact of such proposed rule and regulation or amendment upon all governmental agencies or units and all persons which will be subject thereto and upon the general public. Prior to giving notice of a hearing on a proposed rule and regulation, the state agency shall prepare an economic impact statement that~~ An economic impact statement of a proposed rule shall include:

(A) An ~~analysis, brief description and quantification~~ of the proposed rules and regulations and what is intended to be accomplished by their adoption, including comparisons with the approaches used by the federal government, Missouri, Colorado, Nebraska, Oklahoma, and Iowa. If the approach chosen by the agency to address the policy problem is different from those approaches used by the surrounding states or federal government, an economic impact statement is prepared by an agency shall include an explanation as to why the agency chose a different approach.;

(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) Information on the economic effect of the proposed rule on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole.

The agency preparing the economic impact statement shall solicit information and advice from businesses, associations representing businesses, local governmental units, and individuals that may be affected by the proposed rule.

The agency shall prepare the economic impact statement in coordination with local governmental units that may be affected by the proposed rule.

The agency may also request information that is reasonably necessary for the preparation of an economic impact statement from other businesses, associations, local governmental units, and individuals and from other agencies.

(D) An analysis and detailed quantification of the economic impact of the proposed rule, including the implementation and compliance costs that are reasonably expected to be incurred by or passed along to the businesses, local governmental units, and individuals that may be affected by the proposed rule, specifically including”

1) An estimate of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals as a result of the proposed rule, expressed as a single dollar figure.

2) A determination, for the purposes of the requirement under K.S.A. 77-426 (d) as to whether \$3,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule. ~~a description of the cost, the persons who will bear the costs and those who will be affected by the proposed rules and regulations, including the agency proposing the rules and regulations, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the rules and regulations or the enforcement thereof; and~~

~~(D) a description of any less costly or less intrusive methods that were considered by the state agency for achieving the stated purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations. The state agency may consult with other state agencies when preparing the economic impact statement.~~

~~(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 which will increase their expenditures or fiscal liability.~~

(3) 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. 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.

(c) Upon request of the state rules and regulations board, the joint committee on administrative rules and regulations or the chairperson of either committee or board, the director of the budget shall review the economic impact statement prepared by any state agency and shall prepare a supplemental or revised statement. 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 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.

(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 which 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 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 or entities who will bear the costs;

(3) a description of the costs which would likely accrue if the proposed rules and regulations are not adopted, the persons 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.

77-426. Existing rules and regulations continued in effect; effective date of permanent rules and regulations; filing with joint legislative committee; legislature may request revocation or amendment of rules and regulations. (a) All rules and regulations which are in force and effect at the time this act takes effect shall continue in full force and effect and may be amended, revived or revoked as provided by law. All new rules and regulations and all amendments, revivals or revocations of rules and regulations, other than temporary regulations,

adopted in any year shall be filed with the secretary of state and shall become effective 15 days following its publication in the Kansas register or such later date as clearly expressed in the body of such rule and regulation.

(b) As soon as possible after the filing of any rules and regulations by a state agency, the secretary of state shall submit to the joint committee on administrative rules and regulations such number of copies as may be requested by the joint committee on administrative rules and regulations.

(c) At any time prior to adjournment sine die of the regular session of the legislature, the legislature may adopt a concurrent resolution expressing the concern of the legislature with any permanent or temporary rule and regulation which is in force and effect and on file in the office of the secretary of state and any permanent rule and regulation filed in the office of the secretary of state during the preceding year and requesting the revocation of any such rule and regulation or the amendment of any such rule and regulation in the manner specified in such resolution.

(d) If an economic impact analysis as required in K.S.A. 77-416 (b) indicates that \$3,000,000 or more in implementation and compliance costs are reasonably expected to be incurred by or passed along to businesses, local governmental units, and individuals over any 2-year period as a result of the proposed rule, the agency proposing the rule shall stop work on the proposed rule and may not continue promulgating the proposed rule, notwithstanding any provision authorizing or requiring the agency to promulgate the proposed rule, except as authorized under subsection (d)(1).

(1) Any member of the legislature may introduce a bill authorizing an agency to promulgate a rule that the agency is prohibited from promulgating under subsection (d). The agency may resume the rule-making process as provided in this subsection upon enactment of a bill introduced under this paragraph.