

HOUSE BILL No. 2411

By Committee on Federal and State Affairs

3-25

Proposed Amendments to
House Bill No. 2411 #1
House Federal and State Affairs
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Office of Revisor of Statutes

1 AN ACT concerning administrative rules and regulations; relating to
2 review by the director of the budget; amending K.S.A. 2018 Supp. 77-
3 416 and ~~77-420~~ and repealing the existing sections.

Strike in line 2

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

, 77-420a, 77-421 and 77-422

5 Section 1. K.S.A. ~~2018 Supp. 77-416~~ is hereby amended to read as
6 follows: 77-416. (a) Every state agency shall file with the secretary of state
7 every rule and regulation adopted by it and every amendment and
8 revocation thereof in the manner prescribed by the secretary of state. Each
9 rule and regulation shall include a citation to the statutory section or
10 sections being implemented or interpreted and a citation of the authority
11 pursuant to which it, or any part thereof, was adopted. Every rule and
12 regulation filed in the office of the secretary of state shall be accompanied
13 by a copy of the economic impact statement required by subsection (b) and
14 a copy of the environmental benefit statement if required by subsection
15 (d). A copy of any document adopted by reference in a rule and regulation
16 shall be available from the state agency that adopted the rule and
17 regulation upon request by any person interested therein. The state agency,
18 under the direction of the secretary of state, shall number each section with
19 a distinguishing number and, in making a compilation of the rules and
20 regulations, the sections shall be arranged in numerical order. A decimal
21 system of numbering shall be prohibited.

Strike in line 6

22 (b) (1) At the time of drafting a proposed rule and regulation or
23 amendment to an existing rule and regulation, the state agency shall
24 consider the economic impact of the proposed rule and regulation. The
25 state agency shall prepare an economic impact statement that shall include:
26 (A) An analysis, brief description, and cost and benefit quantification
27 of the proposed rules and regulations and what is intended to be
28 accomplished by their adoption. If the approach chosen by the Kansas
29 agency to address the policy issue is different from that utilized by
30 agencies of contiguous states or of the federal government, the economic
31 impact statement shall include an explanation of why the Kansas agency's
32 rule and regulation differs;

33 (B) whether the proposed rule and regulation is mandated by federal
34 law as a requirement for participating in or implementing a federally
35 subsidized or assisted program and whether the proposed rules and
36

1 regulations exceed the requirements of applicable federal law;

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

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

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

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

12 (iv) the benefits of the proposed rule and regulation compared to the
13 cost;

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

17 (vi) an estimate, ~~expressed as a single-dollar figure,~~ of the total annual
18 implementation and compliance costs that are reasonably expected to be
19 incurred by or passed along to businesses, local governmental units or
20 members of the public and a determination of whether those costs will
21 exceed \$3,000,000 over any two-year period; *and*

22 ~~(vii) an estimate of the total implementation and compliance costs~~
23 ~~that are reasonably expected to be incurred by or passed along to~~
24 ~~businesses, local governmental units and individuals as a result of the~~
25 ~~proposed rule, expressed as a single-dollar figure.~~

26 (2) The state agency shall consult with the league of Kansas
27 municipalities, Kansas association of counties and the Kansas association
28 of school boards, as appropriate, when preparing the economic impact
29 statement of a proposed rule and regulation which increases or decreases
30 revenues of cities, counties or school districts or imposes functions or
31 responsibilities on cities, counties or school districts that will increase their
32 expenditures or fiscal liability. The agency shall consult and solicit
33 information from businesses, business associations, local governmental
34 units, state agencies or institutions and members of the public that may be
35 affected by the proposed rule and regulation or that may provide relevant
36 information.

37 (3) As required pursuant to the provisions of K.S.A. 77-420(d), and
38 amendments thereto, the state agency shall reevaluate and, when
39 necessary, update the economic impact statement when directed to do so
40 by the director of the budget and, if approved by the director of the budget,
41 shall submit the revised economic impact statement at the time of filing a
42 rule and regulation with the secretary of state. If a public hearing was held
43 prior to the adoption of the rule and regulation, a state agency at the time

Strike in line 17

1 of filing a rule and regulation with the secretary of state shall include as a
 2 part of the economic impact statement a statement specifying the time and
 3 place at which the hearing was held and the attendance at the hearing. A
 4 copy of the current economic impact statement shall be available from the
 5 state agency upon request by any party interested therein.

6 (c) Pursuant to the provisions of K.S.A. 77-420, and amendments
 7 thereto, the director of the budget shall review the economic impact
 8 statement prepared by any state agency and shall prepare a supplemental
 9 or revised statement and an independent analysis by the director of the
 10 budget of the cost and the factors as set forth in subsection (b)(1)(A) and
 11 (C) and subsection (e). If possible, the supplemental or revised statement
 12 shall include a reliable estimate in dollars of the anticipated change in
 13 revenues and expenditures of the state. It also shall include a statement, if
 14 determinable or reasonably foreseeable, of the immediate and long-range
 15 economic impact of the rule and regulation upon persons subject thereto,
 16 small employers and the general public. If, after careful investigation, it is
 17 determined that no dollar estimate is possible, the statement shall set forth
 18 the reasons why no dollar estimate can be given. Every state agency is
 19 directed to cooperate with the division of the budget in the preparation of
 20 any statement pursuant to this subsection when, and to the extent,
 21 requested by the director of the budget. The director of the budget shall
 22 follow the procedures set forth in K.S.A. 77-420, and amendments thereto,
 23 in evaluating and accepting or rejecting the proposed rule and regulation.
 24 No agency shall submit a rule and regulation to the secretary of state for
 25 filing before receiving the approval of the director of the budget as
 26 provided in this subsection and K.S.A. 77-420, and amendments thereto.

27 (d) At the time of drafting a proposed environmental rule and
 28 regulation or amendment to an existing environmental rule and regulation,
 29 the state agency shall consider the environmental benefit of such proposed
 30 rule and regulation or amendment. Prior to giving notice of a hearing on a
 31 proposed rule and regulation, the state agency shall prepare an
 32 environmental benefit statement that shall include a description of the need
 33 for and the environmental benefits that will likely accrue as the result of
 34 the proposed rule and regulation or amendment. The description shall
 35 summarize, when applicable, research indicating the level of risk to the
 36 public health or the environment being removed or controlled by the
 37 proposed rule and regulation or amendment. When specific contaminants
 38 are to be controlled by the proposed rule and regulation or amendment, the
 39 description shall indicate the level at which the contaminants are
 40 considered harmful according to currently available research. The state
 41 agency may consult with other state agencies when preparing the
 42 environmental benefit statement. The state agency shall reevaluate and,
 43 when necessary, update the statement at the time of filing a rule and

(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. 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 or by members of the public.

1 regulation with the secretary of state. A copy of the current environmental
2 benefit statement shall be available from the state agency upon request by
3 any party interested therein.

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

6 (1) A description of the capital and annual costs of compliance with
7 the proposed rules and regulations, and the persons who will bear those
8 costs;

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

13 (3) a description of the costs that would likely accrue if the proposed
14 rules and regulations are not adopted, the persons who will bear the costs
15 and those who will be affected by the failure to adopt the rules and
16 regulations; and

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

19 (f) In 2021, the legislative post audit committee shall direct the
20 legislative division of post audit to conduct an audit to study:

21 (1) The accuracy of economic impact statements submitted by state
22 agencies pursuant to this section for the immediately preceding seven
23 years;

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

27 (3) whether the \$3,000,000 cost figure is the appropriate amount of
28 economic impact to trigger the hearing procedure required by K.S.A. 77-
29 420(a), and amendments thereto.

30 Sec. 2. K.S.A. 2018 Supp. 77-420 is hereby amended to read as
31 follows: 77-420. (a) (1) *Except as further provided by this subsection,*
32 every rule and regulation proposed to be adopted by any state agency,
33 before being submitted to the secretary of administration and the attorney
34 general as required by this section, shall be submitted with the economic
35 impact statement for the rule and regulation required by K.S.A. 77-416,
36 and amendments thereto, to the director of the budget for review of the
37 accuracy and completeness of the agency's economic impact statement.

38 ~~The director of the budget shall make an independent determination of the~~
39 ~~amount of implementation and compliance costs reasonably expected to be~~
40 ~~incurred by or passed along to businesses, local government and~~
41 ~~individuals over any two-year period as a result of the proposed rule and~~
42 ~~regulation and shall conduct an independent analysis of the factors set~~
43 ~~forth in K.S.A. 77-416(b)(1)(A) and (C) and (c), and amendments thereto.~~

Strike in line 30
after

1 Every rule and regulation ~~approved requiring approval~~ by the director of
2 the budget shall be stamped as approved, and the date of approval shall be
3 indicated.

4 (2) If the ~~director independently~~ agency determines that a proposed
5 rule and regulation submitted or resubmitted by the agency will not result
6 in implementation or compliance costs of more than \$3,000,000 for
7 businesses, local government or individuals in any two-year period, the
8 director shall:

9 ~~(A) approve the rule and regulation if the director independently~~
10 ~~determines that the economic impact statement is accurate, demonstrates a~~
11 ~~complete analysis as required by K.S.A. 77-416(b)(1)(A) and (C) and (e)~~
12 ~~and amendments thereto, and the director concurs with the economic~~
13 ~~impact statement; or~~

14 ~~(B) disapprove the rule and regulation agency shall provide a copy of~~
15 ~~the economic impact statement to the director, but the director shall not be~~
16 ~~required to review or approve the proposed rule and regulation.~~

17 (3) If the ~~director of the budget~~ agency determines that the proposed
18 rule and regulation will result in implementation and compliance costs of
19 more than \$3,000,000 for businesses, local government or individuals in
20 any two-year period, the director of the budget shall:

21 (A) approve the proposed rule and regulation, if the agency, prior to
22 the submission or the resubmission of a rule and regulation to the director,
23 holds a public hearing and finds that the costs of the proposed rule and
24 regulation have been accurately determined and are necessary for
25 achieving legislative intent and the director, after an independent analysis,
26 concurs with the agency's findings and analysis and approves the
27 economic impact statement; or

28 ~~(B) disapprove the proposed rule and regulation.~~

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

35 (5) For the purposes of this subsection, the implementation and
36 compliance cost shall be calculated from the effective date of the rule and
37 regulation by ~~subtracting the estimated cost savings from the total~~
38 ~~implementation and compliance cost, resulting in the net implementation~~
39 ~~and compliance cost.~~

40 (b) The director of the budget shall submit an annual report to the
41 legislature and to the joint committee on administrative rules and
42 regulations on the first day of the 2019 regular legislative session and
43 subsequent regular legislative sessions on all rules and regulations

Strike in lines 37-39

1 approved or denied by the director. The report shall include the text of
 2 each rule and regulation reviewed, the final economic impact statement
 3 and a summary of the director's analysis supporting the decision to
 4 approve or reject the rule and regulation. The director shall immediately
 5 submit a separate report to the legislature, if in session, and the joint
 6 committee on administrative rules and regulations upon the approval or
 7 denial of a rule or regulation with costs determined to be greater than
 8 \$3,000,000 for businesses, local government or individuals over any two-
 9 year period. The report shall include an analysis of the agency's and the
 10 director's decisions with respect to the necessity of the cost of the rule and
 11 regulation to achieve legislative intent.

12 (c) Every rule and regulation proposed to be adopted by any state
 13 agency ~~that has been approved by the director of the budget pursuant to~~
 14 ~~enacted with the provisions of subsection (a),~~ before being submitted to
 15 the attorney general under this section, shall be submitted to the secretary
 16 of administration for approval of its organization, style, orthography and
 17 grammar subject to such requirements as to organization, style,
 18 orthography and grammar as the secretary may adopt. Every rule and
 19 regulation submitted to the secretary of administration under this
 20 subsection shall be accompanied by a copy of any document which is
 21 adopted by reference by the rule and regulation. Every rule and regulation
 22 approved by the secretary of administration under this subsection shall be
 23 stamped as approved and the date of such approval shall be indicated
 24 therein.

25 (d) Every rule and regulation proposed by any state agency that has
 26 ~~enacted with the provisions of subsection (a) and has been approved by~~
 27 ~~the director of the budget and the secretary of administration as provided~~
 28 ~~in subsections (a) and subsection (c) before being adopted or filed shall be~~
 29 submitted to the attorney general for an opinion as to the legality of the
 30 same, including whether the making of such rule and regulation is within
 31 the authority conferred by law on the state agency. The attorney general
 32 shall promptly furnish an opinion as to the legality of the proposed rule
 33 and regulation so submitted. Every rule and regulation submitted to the
 34 attorney general under this subsection shall be accompanied by a copy of
 35 any document which is adopted by reference by the rule and regulation.
 36 Every rule and regulation approved by the attorney general under this
 37 subsection shall be stamped as approved and the date of such approval
 38 shall be indicated therein.

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

- 41 (1) The rule and regulation has been approved by the director of the
- 42 ~~budget complied with the provisions of subsection (a);~~
- 43 (2) the organization, style, orthography and grammar have been

Strike in lines 13 and 14

and the director of the budget as required

Strike in line 26

submitted to the director of the budget as required under this section,

1 approved by the secretary of administration;
 2 (3) the rule and regulation has been approved in writing by the
 3 attorney general as to legality;
 4 (4) the rule and regulation has been formally adopted by the state
 5 agency after it has been approved by the director of the budget, the
 6 secretary of administration and the attorney general and is accompanied by
 7 a certified or other formal statement of adoption when adoption is by an
 8 executive officer of a state agency, or by a certified copy of the roll call
 9 vote required for its adoption by K.S.A. 77-421, and amendments thereto,
 10 when adoption is by a board, commission, authority or other similar body;
 11 (5) the rule and regulation to be filed is accompanied by a copy of the
 12 economic impact statement as provided by K.S.A. 77-416, and
 13 amendments thereto, that has been reviewed and approved by the director
 14 of the budget as provided by *complies with the provisions of subsection*
 15 *(a); and*
 16 (6) the rule and regulation to be filed is accompanied by a copy of the
 17 environmental benefit statement required by K.S.A. 77-416, and
 18 amendments thereto, if applicable.
 19 Sec. 3. K.S.A. 2018 Supp. 77-416 and 77-420 are hereby repealed.
 20 Sec. 4. This act shall take effect and be in force from and after its
 21 publication in the statute book.

Strike in line 19
 , 77-420a, 77-421 and 77-422
 And by renumbering sections accordingly

Kansas register

Insert Attachment A

Attachment A

Sec. 3. K.S.A. 77-420a is hereby amended to read as follows: 77-420a. No rule and regulation shall be adopted prior to the effective date of the statute authorizing its adoption, but prior to the effective date of such statute, the proposed rule and regulation may be submitted to the director of the budget, the secretary of administration and to the attorney general and to the director of the budget for approval as required by K.S.A. 77-420, and amendments thereto, and notice of the proposed rule and regulation may be given and a hearing held thereon in the manner provided by K.S.A. 77-421, and amendments thereto.

Sec. 4. K.S.A. 77-421 is hereby amended to read as follows: 77-421. (a) (1) Except as provided by subsection (a)(2), subsection (a)(3) or subsection (a)(4), prior to the adoption of any permanent rule and regulation or any temporary rule and regulation which is required to be adopted as a temporary rule and regulation in order to comply with the requirements of the statute authorizing the same and after any such rule and regulation has been approved by the director of the budget, the secretary of administration and the attorney general and the director of the budget, the adopting state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations established by K.S.A. 77-436, and amendments thereto. The notice shall be provided to the secretary of state and to the chairperson, vice chairperson, ranking minority member of the joint committee and legislative research department and shall be published in the Kansas register. A complete copy of all proposed rules and regulations and the complete economic impact statement required by K.S.A. 77-416, and amendments thereto, shall accompany the notice sent to the secretary of state. The notice shall contain:

- (A) A summary of the substance of the proposed rules and regulations;
 - (B) a summary of the economic impact statement indicating the estimated economic impact on governmental agencies or units, persons subject to the proposed rules and regulations and the general public;
 - (C) a summary of the environmental benefit statement, if applicable, indicating the need for the proposed rules and regulations;
 - (D) the address where a complete copy of the proposed rules and regulations, the complete economic impact statement, the environmental benefit statement, if applicable, required by K.S.A. 77-416, and amendments thereto, may be obtained;
 - (E) the time and place of the public hearing to be held; the manner in which interested parties may present their views; and
 - (F) a specific statement that the period of 60 days' notice constitutes a public comment period for the purpose of receiving written public comments on the proposed rules and regulations and the address where such comments may be submitted to the state agency. Publication of such notice in the Kansas register shall constitute notice to all parties affected by the rules and regulations.
- (2) Prior to adopting any rule and regulation which establishes seasons and fixes bag, creel, possession, size or length limits for the taking or possession of wildlife and after such rule and regulation has been approved by the secretary of administration and the attorney general, the secretary of wildlife, parks and tourism shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.
- (3) Prior to adopting any rule and regulation which establishes any permanent prior authorization on a prescription-only drug pursuant to K.S.A. 39-7,120, and amendments thereto, or which concerns coverage or reimbursement for pharmaceuticals under the pharmacy program of the state medical plan, and after such rule and regulation has been approved by the director of the budget, the secretary of administration and the attorney general, the secretary of health and environment shall give at least 30 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of 30 days' notice constitutes a public comment period on such rules and regulations.

- (4) Prior to adopting any rule and regulation pursuant to subsection (c), the state agency shall give at least 60 days' notice of its intended action in the Kansas register and to the secretary of state and to the joint committee on administrative rules and regulations created pursuant to K.S.A. 77-436, and amendments thereto. All other provisions of subsection (a)(1) shall apply to such rules and regulations, except that the statement required by subsection (a)(1)(E) shall state that the period of notice constitutes a public comment period on such rules and regulations.
- (b) (1) On the date of the hearing, all interested parties shall be given reasonable opportunity to present their views or arguments on adoption of the rule and regulation, either orally or in writing. At the time it adopts or amends a rule and regulation, the state agency shall prepare a concise statement of the principal reasons for adopting the rule and regulation or amendment thereto, including:
- (A) The agency's reasons for not accepting substantial arguments made in testimony and comments; and
- (B) the reasons for any substantial change between the text of the proposed adopted or amended rule and regulation contained in the published notice of the proposed adoption or amendment of the rule and regulation and the text of the rule and regulation as finally adopted.
- (2) Whenever a state agency is required by any other statute to give notice and hold a hearing before adopting, amending, reviving or revoking a rule and regulation, the state agency, in lieu of following the requirements or statutory procedure set out in such other law, may give notice and hold hearings on proposed rules and regulations in the manner prescribed by this section.
- (3) Notwithstanding the other provisions of this section, the secretary of corrections may give notice or an opportunity to be heard to any inmate in the custody of the secretary with regard to the adoption of any rule and regulation.
- (c) (1) The agency shall initiate new rulemaking proceedings under this act, if a state agency proposes to adopt a final rule and regulation that:
- (A) Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and
- (B) is not a logical outgrowth of the rule and regulation as originally proposed.
- (2) For the purposes of this provision, a rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed if a person affected by the final rule and regulation was not put on notice that such person's interests were affected in the rule making.
- (d) When, pursuant to this or any other statute, a state agency holds a hearing on the adoption of a proposed rule and regulation, the agency shall cause written minutes or other records, including a record maintained on sound recording tape or on any electronically accessed media or any combination of written or electronically accessed media records of the hearing to be made. If the proposed rule and regulation is adopted and becomes effective, the state agency shall maintain, for not less than three years after its effective date, such minutes or other records, together with any recording, transcript or other record made of the hearing and a list of all persons who appeared at the hearing and who they represented, any written testimony presented at the hearing and any written comments submitted during the public comment period.
- (e) No rule and regulation shall be adopted by a board, commission, authority or other similar body except at a meeting which is open to the public and notwithstanding any other provision of law to the contrary, no rule and regulation shall be adopted by a board, commission, authority or other similar body unless it receives approval by roll call vote of a majority of the total membership thereof.
- Sec. 5. K.S.A. 77-422 is hereby amended to read as follows: 77-422. (a) A rule and regulation may be adopted by a state agency as a temporary rule and regulation if the state agency and the state rules and regulations board finds that the preservation of the public peace, health, safety or welfare necessitates or makes desirable putting such rule and regulations into effect prior to the time it could be put into effect if the agency were to comply with the notice, hearing and publication requirements of this act or prior to the effective date prescribed by K.S.A. 77-426, and amendments thereto.
- (b) Temporary rules and regulations may be adopted without the giving of notice and the holding of a hearing thereon.
- (c) (1) A temporary rule and regulation shall take effect:

- (A) After approval by the ~~director of the budget~~, the secretary of administration and the attorney general and the director of the budget as provided by K.S.A. 77-420, and amendments thereto;
- (B) after approval by the state rules and regulations board as provided by K.S.A. 77-423, and amendments thereto; and
- (C) upon filing with the secretary of state.
- (2) The effective date of all or specific parts of a temporary rule and regulation may be delayed to a date later than its filing date if the delayed effective date of such rule and regulation, or specific parts thereof, is clearly expressed in the body of such rule and regulation.
- (3) A temporary rule and regulation shall be effective for a period not to exceed 120 days except that, for good cause, a state agency may request that a temporary rule and regulation may be renewed one time for an additional period not to exceed 120 days.
- (d) A temporary rule and regulation which amends an existing rule and regulation shall have the effect of suspending the force and effect of the existing rule and regulation until such time as the temporary rule and regulation is no longer effective. In such case, at the time the temporary rule and regulation ceases to be effective, the existing permanent rule and regulation which was amended by the temporary rule and regulation shall be in full force and effect unless such existing rule and regulation is otherwise amended, revoked or suspended as provided by law.
- (e) Temporary rules and regulations shall be numbered in accordance with the numbering arrangement approved by the secretary of state and otherwise shall conform to the approval, adoption and filing requirements of this act, insofar as the same can be made applicable.