

Approved: 3-21-95  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 17, 1995 in Room 254-E- of the Capitol.

All members were present or excused:  
Senator Wisdom, excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:  
Written testimony by Bill Bider, Director, Bureau of Waste Management to Secretary  
James O'Connell  
Written testimony by David T. Burnett, Administrator, The Southeast Kansas Solid  
Waste Authority

Others attending: See attached list

**HB 2476: An Act concerning sand and gravel pits; relating to application of certain statutes to evaporation of water therefrom**

The chairperson told the committee that in view of numerous communications received it was his opinion that the committee should proceed with **HB 2476** as it was received from the House.

Senator Emert moved to report **HB 2476** favorable for passage. Senator Hardenburger seconded the motion.

A brief discussion followed with Mr. Pope stating his department had agreed with the concept of the House amendment and was willing to accept the policy.

The motion carried.

**HB 2036: An Act concerning waste management; relating to certain grants and other programs to assist cities, counties and regional solid waste management entities; concerning certain solid waste tonnage fees; limiting certain full-time equivalent positions**

Committee members were handed a Memorandum from Bill Bider, Director, Bureau of Waste Management to Secretary James O'Connell concerning **HB 2036**. (Attachment 1)

Committee members were handed copies of a FAX delivered to the Chairman from David T. Burnett, Administrator, The Southeast Kansas Solid Waste Authority. (Attachment 2)

An amendment to **HB 2036** was handed to committee members. (Attachment 3)

Senator Lawrence made a motion to adopt the amendment proposed in (Attachment 3). Senator Vancrum seconded the motion.

Discussion pointed out this amendment would provide that private enterprise would be put on an equal footing with the counties. Concern was expressed that the amendment might be more restrictive than intended, that this might be an absolute requirement to be eligible for a grant.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 17, 1995.

Senator Hardenburger offered a substitute amendment to provide the following language “(1) Submit to the department satisfactory proof that the county, city or regional entity has published, in the manner provided by law for competitive bids, a request for proposals for the project to be funded by the grant and has allowed sufficient time for notice and submission of proposals.” Senator Tillotson seconded the motion and the motion carried.

Discussion expressed the concern that there be sufficient funding for the numerous grants in progress. Attention was called to the Attachment 1 handed out on March 16, a breakdown by program of the solid waste tipping fee. The issue of whether or not the tonnage would decrease as indicated by the department or increase was also in question. Further discussion commented on the fact that many counties no longer have their own facilities. Concern was expressed that it appeared the tipping fee was subsidizing KDHE by supporting 44 positions.

Senator Lee, with a second from Senator Hardenburger, moved to reconsider previous action taken on March 16, that the law would be silent on a local county tipping fee. The motion would not prohibit a local county tipping fee, it would just be silent on the issue.

During discussion it appeared the only solution to the problem was the one proposed originally by the department and the real issue was whether the tipping fee should be cut to \$1. The point was made that Senator Lee's motion would give counties more flexibility and the department would have more flexibility as well.

The motion carried.

Senator Emert moved to pass **HB 2036** out favorable as amended. Senator Tillotson seconded the motion.

Members were handed an amendment to **HB 2036**. (Attachment 4)

Senator Vancrum made a substitute motion to amend auto vehicle window glass into **HB 2036** under construction and demolition waste. Senator Lee seconded the motion and the motion carried.

A member questioned whether previous action had reduced the tipping fee to \$1 and questioned the sunset issue. Staff stated it was their opinion that at the time the tipping fee was reduced to \$1 the fund was allowed to continue in a permanent fashion.

Senator Emert made a motion to pass **HB 2036** out as amended favorable for passage. Senator Tillotson seconded the motion and the motion carried.

**HB 2120: An Act concerning adoption of rules and regulations; relating to the economic impact statement, requiring an environmental impact statement in certain cases**

Members were handed a fiscal note on **HB 2120**. (Attachment 5)

Members were advised of a letter from the Department of Administration and handed an amendment on **HB 2120**. (Attachments 6 and 7)

Senator Morris moved to add Wildlife and Parks in the laundry list of agencies. Senator Tillotson seconded the motion and the motion carried.

Discussion dealt with the balloon for **HB 2120** which strikes the new language that changes what is on the economic impact statement. The intent of the amendment would be to remove all agencies other than the ones specified.

Senator Walker moved, with a second from Senator Vancrum, to adopt the balloon on **HB 2120**. The motion carried.

Senator Walker moved to exempt the federal mandated rules and regulations in **HB 2120**. Senator Vancrum seconded the motion and the motion carried.

A member expressed concern that enactment of **HB 2120** would add another layer of bureaucracy. Ron Hammerschmidt, Acting Director of Environment, told the committee his organization felt this action was worthwhile stating they would use present employees.

Staff called attention of the committee to the top of page 3 which refers to rules and regulations adopted by the Secretary of Agriculture. At the present time the final structure of the Board of Agriculture is unknown. Therefore staff suggested naming the State Board of Agriculture or the Secretary of Agriculture.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 17, 1995.

Senator Emert moved to amend the bill using both the State Board of Agriculture or the Secretary of Agriculture. The motion carried.

Senator Lawrence made a motion to pass **HB 2120** favorable as amended. Senator Morris seconded the motion and the motion carried.

Senator Lawrence having voted on the prevailing side of **SCR 1610** moved to reconsider the actions taken. Senator Emert seconded the motion and the motion carried.

Senator Lawrence with a second by Senator Emert moved to report **SCR 1610** favorable for passage. The motion carried.

The meeting adjourned at 8:55 a.m.

The next meeting is scheduled for March 20, 1995.

**SENATE COMMITTEE ON ENERGY & NATURAL  
RESOURCES GUEST LIST COMMITTEE**

DATE: March 17, 1995

NAME	REPRESENTING
JOE DICK	KCK BPU
Chiquita Cornelius	Ks. B.I.R.P.
Bill Bider	KDHE
Mike Lally	LGI / KAPA
CARL Nuzman	LGI / KAPA
David L. Payne	DWR
Martin L. Starnes	AM&S
DANE BARCLAY	ALSOP SAND Co.
HUGH DIDIER	MEIER'S READY MIX INC. MEIER SAND
Dennis Peterson	Riley County
JOHN BOTTEBERG	DEFFENBAUGH
Tom Stiles	Kansas Water Office
Leland E. Roff	DWR - KS DA
Faith Loretto	Dept. of Hm.
KEVIN T. STAMPER	INTERN - SEN. J. MORAN

DEPARTMENT OF HEALTH AND ENVIRONMENT  
Division of Environment  
Bureau of Waste Management

MEMORANDUM

TO: Secretary James O'Connell  
FROM: Bill Bider, Director, BWM *Bill Bider*  
DATE: March 16, 1995  
RE: Senate Action on HB 2036 - Use of Tipping Fees

As you requested, I am providing some information regarding action and discussion in the Senate Energy and Natural Resources Committee this morning on HB 2036. Please understand that this information is based upon my observations and may not represent the opinions and knowledge level of all committee members.

1. The committee passed a motion to decrease the tipping fee to \$1.00 per ton effective July 1, 1995. Senator Vancrum indicated that the department needed more than the \$0.75 per ton suggested by some private conferees. Discussion on this issue leads me to conclude that some members of the committee feel that there will be enough revenue generated by \$1.00 per ton to support KDHE programs as well as maintain aid-to-local programs.
2. With a decrease to \$1.00 per ton, tipping fee revenues in FY 1996 will be approximately \$3.4 million. The governor's FY 1996 budget for total expenditures from the fund is \$5.25 million (\$2.5 million is for grant programs). Our original grant proposal would have held FY 1996 grants at about this amount, but grants would increase substantially in FY 1997 when the implementation grant program began.
3. Senator Sallee and others talked about how much more waste was disposed than originally estimated, so that the fee could be dropped. Senator Sallee also commented that he expected tipping fee revenues to go up in the future. We expect the opposite to occur as counties implement waste reduction projects such as composting and recycling. Out of state transfers are uncertain and could have major impacts on total revenues if one or more large landfills change current practices.
4. It appears that the legislature may significantly reduce tipping fee revenues, but leave the provisions in the law for all grant programs as originally drafted for larger available funding. We recommend two revisions if the tipping fee decreases to \$1.00 this year:
  - o Limit the base grant program to one year only.
  - o Eliminate the grants advisory board since total available funds will likely be less than \$2.0 million over the life of the program.

Tomorrow morning (March 17), the committee expects to complete action on this bill. Also, if we get the opportunity, we should emphasize the importance of eliminating the long-term tipping fee sunset provision added by the House. If you have any questions, please let me know.

C Ron Hammerschmidt

*Senate Energy + Nat'l Res.  
March 17, 1995  
Attachment 1*

255-E

**URGENT MESSAGE FOR: SENATOR DON SALLEE**

**From: The Southeast Kansas Solid Waste Authority  
David T. Burnett, Administrator  
Phone (316) 431-0080 FAX 431-4805**

AS LONG AS THERE IS ONE COUNTY IN THIS STATE THAT CAN NOT FUND SUBTITLE "D" COMPLIANCE...THERE WILL NOT BE ANY SUM OF MONEY IN THE KDH&E TIPPING FEE FUND THAT CAN EVER BE CONSTRUED AS SURPLUS !!! STATE LAW REQUIRES THAT LANDFILL TONNAGE BE REDUCED. WILL YOU INCREASE THE TIPPING FEE IN PROPORTION TO THE DECREASES, AS TONNAGE IS FORCED TO COME INTO COMPLIANCE ???

NOT ONE KANSAS CITIZEN WILL BENEFIT FROM THE TIPPING FEE REDUCTION...UNLESS THAT CITIZEN OWNS STOCK IN A LARGE "FOR-PROFIT" WASTE MANAGEMENT COMPANY. Such firms will not operate in the small rural counties of Kansas. ONLY THE COUNTY COMMISSIONERS ARE LEFT TO FUND SOLID WASTE MANAGEMENT IN SMALL RURAL COUNTIES. Reducing the Tipping Fee is a concession to the large private "for-profit" waste management companies at the expense of those who are legally responsible for the solid waste management.

**Do the Solid Waste Committee Chairpersons and County Commissioners in the counties of your district know how you have proposed to change this bill ??? If they knew, I am convinced that most would not approve.**

**Do your constituents know how you stand on this bill ???**

**With much effort, I have found it difficult...approaching impossible to determine the status of HB 2036. Is it your intent to have it passed and on the floor of the senate before anyone knows what has happened ???**

**The bill that KDH&E presented to the House Committee on Energy & Natural Resources was the closest thing to a compromise bill that is out there today. ARE YOU CHOOSING TO IGNORE THIS COMPROMISE ???**

**The Association of counties has not appropriately represented our counties on this issue and the large solid waste management companies have hired professionals to oppose the compromise proposed by KDH&E. WILL YOUR HEAR OUR PLEA FOR HELP ???**

**The counties will probably have to use any taxing authority they have to compensate for the reduction in funds created by the "AUTO TAG BILL". Clarifying the ability of counties to assess a tipping fee will help, but not enough.**

**PLEASE PASS THE ORIGINAL KDH&E  
VERSION OF HB 2036**

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Attachment 2

1 or other applicable statutes, by administering grants that pay up to ~~100%~~  
2 75% of costs incurred by such a county, city or regional entity to develop  
3 and implement temporary ~~or permanent~~ agricultural pesticide collection  
4 programs.

5 ~~(g)~~ (f) The secretary is authorized to assist counties, cities or regional  
6 solid waste management entities that are part of an interlocal agreement  
7 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
8 or other applicable statutes, by administering grants that pay up to ~~100%~~  
9 75% of costs incurred by such a county, city or regional entity to develop  
10 and implement exempt small quantity hazardous waste generator waste  
11 collection programs, subject to the following:

12 (1) The aggregate amount of all such grants made for a fiscal  
13 year shall not exceed \$150,000; and

14 (2) no grantee shall receive any such grants in an aggregate  
15 amount exceeding \$50,000.

16 ~~(h)~~ (g) To be eligible for base grants awarded pursuant to this section,  
17 the counties, cities or regional solid waste management entities must be  
18 participating in a solid waste management planning process or imple-  
19 menting an approved solid waste management plan. To be eligible for  
20 competitive grants awarded pursuant to this section, the counties, cities  
21 or regional solid waste management entities must be implementing a an  
22 approved solid waste management plan. Indications of planning process  
23 participation include the formation of a county or regional planning com-  
24 mittee, ~~receipt of planning grant funds~~, regular solid waste planning com-  
25 mittee meetings, amendment of existing solid waste management plans  
26 and development of new comprehensive solid waste management plans.  
27 Failure to pay solid waste tonnage fees on wastes disposed in Kansas  
28 pursuant to K.S.A. 65-3415b and amendments thereto, shall bar receipt  
29 of any grant funds until fees and related penalties have been paid. The  
30 secretary may establish additional minimum requirements for grant eli-  
31 gibility.

32 (h) The secretary shall prepare and deliver to the legislature  
33 on or before January 2, 1998, a report which summarizes all solid  
34 waste management grant program activities, solid waste manage-  
35 ment fund revenues and recommendations regarding continuation  
36 of solid waste management programs.

37 (i) All grants shall be made in accordance with appropriations acts  
38 from the state general fund or from moneys in the solid waste manage-  
39 ment fund created by K.S.A. 65-3415a and amendments thereto.

40 Sec. 2. K.S.A. 1994 Supp. 65-3415a is hereby amended to read as  
41 follows: 65-3415a. (a) There is hereby created in the state treasury the  
42 solid waste management fund.

43 (b) The secretary shall remit at least monthly to the state treasurer

: (1) Submit to the department satisfactory proof that the county, city or regional entity has published, in the manner provided by law for competitive bids, a request for proposals for the project to be funded by the grant and, allowing sufficient time for notice and submission of proposals, has received no qualified bid; and (2)

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Attachment 3

Proposed Amendment to HB 2036

Add a section to read as follows:

"Sec. 7. K.S.A. 1994 Supp. 65-3402 is hereby amended to read as follows: 65-3402. As used in this act, unless the context otherwise requires:

(a) "Solid waste" means garbage, refuse and other discarded materials including, but not limited to, solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Solid waste does not include hazardous wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments thereto, recyclables or the waste of domestic animals as described by subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

(b) "Solid waste management system" means the entire process of storage, collection, transportation, processing, and disposal of solid wastes by any person engaging in such process as a business, or by any state agency, city, authority, county or any combination thereof.

(c) "Solid waste processing facility" means incinerator, compost plant, transfer station, reclamation facility or any other location where solid wastes are consolidated, temporarily stored, salvaged or otherwise processed prior to being transported to a final disposal site. This term does not include a scrap material recycling and processing facility.

(d) "Solid waste disposal area" means any area used for the disposal of solid waste from more than one residential premise, or one or more commercial, industrial, manufacturing or municipal operations.

(e) "Person" means individual, partnership, firm, trust, company, association, corporation, individual or individuals having controlling or majority interest in a corporation, institution, political subdivision, state agency or federal department or agency.

(f) "Waters of the state" means all streams and springs, and

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all bodies of surface or groundwater, whether natural or artificial, within the boundaries of the state.

(g) "Secretary" means the secretary of health and environment.

(h) "Department" means the Kansas department of health and environment.

(i) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water.

(j) "Open dumping" means the disposal of solid waste at any solid waste disposal area or facility which is not permitted by the secretary under the authority of K.S.A. 65-3407, and amendments thereto, or the disposal of solid waste contrary to rules and regulations adopted pursuant to K.S.A. 65-3406, and amendments thereto.

(k) "Generator" means any person who produces or brings into existence solid waste.

(l) "Monitoring" means all procedures used to (1) systematically inspect and collect data on the operational parameters of a facility, an area or a transporter, or (2) to systematically collect and analyze data on the quality of the air, groundwater, surface water or soils on or in the vicinity of a solid waste disposal facility or area.

(m) "Closure" means the permanent cessation of active disposal operations, abandonment of the disposal area, revocation of the permit or filling with waste of all areas and volume specified in the permit and preparing the area for the long-term care.

(n) "Postclosure" means that period of time subsequent to closure of a solid waste disposal area when actions at the site must be performed.

(o) "Reclamation facility" means any location at which material containing a component defined as a hazardous substance

pursuant to K.S.A. 65-3452a and amendments thereto is processed.

(p) "Designated city" means a city or group of cities which, through interlocal agreement with the county in which they are located, is delegated the responsibility for preparation, adoption or implementation of the county solid waste plan.

(q) "Nonhazardous special waste" means any solid waste designated by the secretary as requiring extraordinary handling in a solid waste disposal area.

(r) "Recyclables" means any scrap materials that can be used as a replacement for virgin material in manufacturing, including but not limited to ferrous metals, scrap paper products, scrap plastics and nonferrous metals. Nonferrous metals shall be defined by rule and regulation.

(s) "Scrap material processing industry" means any person who accepts, processes and markets recyclables.

(t) "Scrap material recycling and processing facility" means a fixed location that utilizes machinery and equipment for processing only recyclables.

(u) "Construction and demolition waste" means solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; untreated wood and untreated sawdust from any source; solid waste consisting of motor vehicle window glass; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. Such wastes include, but are not limited to, bricks, concrete and other masonry materials, roofing materials, soil, rock, wood, wood products, wall covering, plaster, drywall, plumbing fixtures, electrical wiring, electrical components containing no hazardous materials and nonasbestos insulation. It shall not include asbestos waste, garbage, cardboard, furniture, appliances, electrical equipment containing hazardous materials, tires, drums and containers even though such wastes resulted from construction and demolition activities. Clean rubble that is mixed with other construction and demolition waste during demolition or

transportation shall be considered to be construction and demolition waste.

(v) "Construction and demolition landfill" means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition wastes. This term shall not include a site that is used exclusively for the disposal of clean rubble.

(w) "Clean rubble" means inert uncontaminated construction and demolition waste which includes concrete and concrete products, reinforcing steel, asphalt pavement, brick, soil or rock.";

Renumber the remaining sections and amend the repealer and the title accordingly



DIVISION OF THE BUDGET  
Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1504  
(913) 296-2436  
FAX (913) 296-0231

Bill Graves  
Governor

Gloria M. Timmer  
Director

February 2, 1995

The Honorable Carl Holmes, Chairperson  
House Committee on Energy and Natural Resources  
Statehouse, Room 115-S  
Topeka, Kansas 66612

Dear Representative Holmes:

SUBJECT: Fiscal Note for HB 2120 by House Committee on  
Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note  
concerning HB 2120 is respectfully submitted to your committee.

HB 2120 would require that state agencies drafting a proposed  
environmental rule and regulation or amending an existing one  
prepare a statement of environmental benefit. The bill specifies  
the content of the environmental benefit statement, which includes  
a description of the need for the environmental benefit and a  
description of the level of environmental risk to be controlled.  
HB 2120 defines an "environmental rule and regulation" as one  
adopted by the Secretary of Agriculture, Secretary of Health and  
Environment, or the State Corporation Commission, which has as a  
primary purpose the protection of the environment.

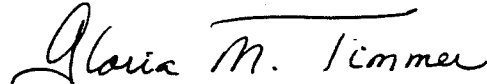
HB 2120 also clarifies and expands on the type of information  
that must be contained in economic impact statements completed by  
agencies proposing or amending an existing rule and regulation.  
This would include capital and annual costs of compliance, initial  
and implementation costs, an estimated amount of paperwork, and a  
statement of the data and methodology used to make cost estimates.

The fiscal impact of HB 2120 cannot be accurately determined,  
as the impact would depend on the number and complexity of rules  
and regulations proposed for implementation and the level of detail  
required for each environmental benefit statement. However, the  
Department of Agriculture and the State Corporation Commission

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indicate that the fiscal impact of HB 2120, involving both benefit and impact statements, could be absorbed. The Department of Health and Environment indicates that the fiscal impact of HB 2120 could range from no impact to \$86,400 annually. The estimate of \$86,400 is based on a full review of all rules and regulations adopted, even for those prepared at the federal level, which the risk analyses had already completed and discussed in a public forum. For economic impact statements, it is estimated that the additional requirements could be absorbed by most state agencies.

Sincerely,



Gloria M. Timmer  
Director of the Budget

cc: Laura Epler, KDHE  
Don Jacka, Agriculture  
Tom Day\Matt Holt, KCC

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION

State Capitol

Room 263-E

Topeka, Kansas 66612-1572

(913) 296-3011

FAX (913) 296-2702

SHEILA FRAHM, Lt. Governor/Secretary  
JEFF WAGAMAN, Deputy Secretary

BILL GRAVES, Governor

March 16, 1995

Senator Don Sallee, Chairperson  
Senate Energy and Natural Resources Committee  
Room 255-E, State Capitol Building  
Topeka, Kansas 66612

Re: HB 2120

Dear Senator Sallee:

Following a review of HB 2120, I am writing to propose an amendment to Section 2. HB 2120 would expand the required analyses of the costs of proposed regulations as set out in economic impact statements. Section 2 amends K.S.A. 77-416(b) to add several new items to the list of required elements that must be included in economic impact statements for all regulations. However, the main focus of the bill, and of the conferees on HB 2120, is on a new requirement to provide an environmental benefits analysis for all "environmental rules and regulations" adopted by the Secretary of Agriculture, the Secretary of Health and Environment, and the State Corporation Commission. During the Committee hearing, it was noted that the proposed amendments to K.S.A. 77-416(b) were of a general application, whereas the primary thrust of the remainder of the bill is on environmental regulations. In that context, there were questions raised about the need for the expanded information for all regulations.

HB 2120 is philosophically consistent with the Governor's desire to carefully evaluate the necessity and effect of regulations. However, by limiting the amendments in Section 2 to those agencies which are the focus of the bill, there would be an opportunity to evaluate the utility of the additional information in economic impact statements and the extent of any additional burden on the agencies preparing the impact statements prior to expanding the requirements to all state agencies. It should also be noted that the existing requirements for economic impact statements are quite comprehensive and generally should provide a good base of information if agencies perform the required analyses carefully.

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HOUSE BILL No. 2120

By Committee on Energy and Natural Resources

1-19

12 AN ACT concerning adoption of rules and regulations; relating to the  
13 economic impact statement; requiring an environmental impact state-  
14 ment in certain cases; amending K.S.A. 77-420 and 77-421 and K.S.A.  
15 1994 Supp. 77-415 and 77-416 and repealing the existing sections.  
16

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

18 Section 1. K.S.A. 1994 Supp. 77-415 is hereby amended to read as  
19 follows: 77-415. As used in K.S.A. 77-415 through 77-437, and amend-  
20 ments thereto, unless the context clearly requires otherwise:

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

26 (2) "Person" means firm, association, organization, partnership, busi-  
27 ness trust, corporation or company.

28 (3) "Board" means the state rules and regulations board established  
29 under the provisions of K.S.A. 77-423 and amendments thereto.

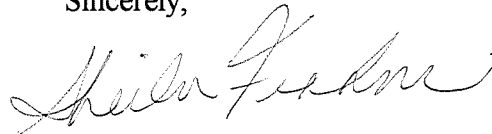
30 (4) "Rule and regulation," "rule," "regulation" and words of like ef-  
31 fect mean a standard, statement of policy or general order, including  
32 amendments or revocations thereof, of general application and having the  
33 effect of law, issued or adopted by a state agency to implement or inter-  
34 pret legislation enforced or administered by such state agency or to gov-  
35 ern the organization or procedure of such state agency. Every rule and  
36 regulation adopted by a state agency to govern its enforcement or ad-  
37 ministration of legislation shall be adopted by the state agency and filed  
38 as a rule and regulation as provided in this act. The fact that a statement  
39 of policy or an interpretation of a statute is made in the decision of a case  
40 or in a state agency decision upon or disposition of a particular matter as  
41 applied to a specific set of facts does not render the same a rule and  
42 regulation within the meaning of the foregoing definition, nor shall it  
43 constitute specific adoption thereof by the state agency so as to be re-

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Senator Don Sallee  
March 16, 1995  
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For these reasons, I am requesting consideration of an amendment to Section 2 of HB 2120 which would limit the expanded economic impact statement requirements to the Secretary of Agriculture, the Secretary of Health and Environment, and the Kansas Corporation Commission. A proposed balloon amendment is attached. I would be glad to discuss the amendment or other aspects of HB 2120 with you. Thank you for your consideration of this proposal.

Sincerely,



Sheila Frahm  
Lieutenant Governor

cc: Jeff Wagaman

0007067.01



1 quired to be filed. A rule and regulation as herein defined shall not in-  
2 clude any rule and regulation which: (a) Relates to the internal manage-  
3 ment or organization of the agency and does not affect private rights or  
4 interest; (b) is an order directed to specifically named persons or to a  
5 group which does not constitute a general class and the order is served  
6 on the person or persons to whom it is directed by appropriate means.  
7 The fact that the named person serves a group of unnamed persons who  
8 will be affected does not make such an order a rule and regulation; (c)  
9 relates to the use of highways and is made known to the public by means  
10 of signs or signals; (d) relates to the construction and maintenance of  
11 highways or bridges or the laying out or relocation of a highway other  
12 than bidding procedures or the management and regulation of rest areas;  
13 (e) relates to the curriculum of public educational institutions or to the  
14 administration, conduct, discipline, or graduation of students from such  
15 institutions or relates to parking and traffic regulations of state educa-  
16 tional institutions under the control and supervision of the state board of  
17 regents; (f) relates to the emergency or security procedures of a correc-  
18 tional institution, as defined in subsection (d) of K.S.A. 75-5202 and  
19 amendments thereto; (g) relates to the use of facilities by public libraries;  
20 (h) relates to military or naval affairs other than the use of armories; (i)  
21 relates to the form and content of reports, records or accounts of state,  
22 county or municipal officers, institutions, or agencies; (j) relates to ex-  
23 penditures by state agencies for the purchase of materials, equipment, or  
24 supplies by or for state agencies, or for the printing or duplicating of  
25 materials for state agencies; (k) establishes personnel standards, job clas-  
26 sifications, or job ranges for state employees who are in the classified civil  
27 service; (l) fixes or approves rates, prices, or charges, or rates, joint rates,  
28 fares, tolls, charges, rules, regulations, classifications or schedules of com-  
29 mon carriers or public utilities subject to the jurisdiction of the state  
30 corporation commission, except when a statute specifically requires the  
31 same to be fixed by rule and regulation; (m) determines the valuation of  
32 securities held by insurance companies; (n) is a statistical plan relating to  
33 the administration of rate regulation laws applicable to casualty insurance  
34 or to fire and allied lines insurance; (o) is a form, the content or substan-  
35 tive requirements of which are prescribed by rule and regulation or stat-  
36 ute; (p) is a pamphlet or other explanatory material not intended or de-  
37 signed as interpretation of legislation enforced or adopted by a state  
38 agency but is merely informational in nature; (q) establishes seasons and  
39 fixes bag, creel, possession, size or length limits for the taking or posses-  
40 sion of wildlife, if such seasons and limits are made known to the public  
41 by other means; or (r) establishes records retention and disposition sched-  
42 ules for any or all state agencies.

43 (5) "Environmental rule and regulation" means a rule and regulation,

1 adopted by the secretary of agriculture, the secretary of health and en-  
 2 vironment or the state corporation commission, which has as a primary  
 3 purpose the protection of the environment.

4 Sec. 2. K.S.A. 1994 Supp. 77-416 is hereby amended to read as fol-  
 5 lows: 77-416. (a) Every state agency shall file with the secretary of state  
 6 every rule and regulation adopted by it and every amendment and rev-  
 7 ocation thereof. Every rule and regulation, other than a temporary rule  
 8 and regulation, filed in the office of the secretary of state shall be filed  
 9 in triplicate, and nine copies of every temporary rule and regulation shall  
 10 be filed in the office of the secretary of state, and each section shall  
 11 include a citation to the statutory section or sections being implemented  
 12 or interpreted and a citation of the authority pursuant to which it, or any  
 13 part thereof, was adopted. Every rule and regulation filed in the office of  
 14 the secretary of state shall be accompanied by a copy of the economic  
 15 impact statement required by subsection (b), a copy of the environmental  
 16 benefit statement if required by subsection (d) and any document which  
 17 is adopted by reference by the rule and regulation, except that for the  
 18 purpose of avoiding unwarranted expense the board may authorize and  
 19 direct the secretary of state to file any rule and regulation without the  
 20 document which is adopted by such rule and regulation whenever the  
 21 board determines that: (1) The document is a technical manual of limited  
 22 public interest; (2) the cost of providing file copies of such document is  
 23 excessive in view of its limited public interest; and (3) the document will  
 24 be available for public inspection during normal business hours in the  
 25 office of the agency adopting the rule and regulation. A copy of any doc-  
 26 ument adopted by reference in a rule and regulation shall be available  
 27 from the state agency which adopted the rule and regulation upon request  
 28 by any person interested therein. The state agency, under the direction  
 29 of the secretary of state, shall number each section with a distinguishing  
 30 number and, in making a compilation of the rules and regulations, the  
 31 sections shall be arranged in numerical order. A decimal system of num-  
 32 bering shall be prohibited.

33 (b) At the time of drafting a proposed rule and regulation or amend-  
 34 ment to an existing rule and regulation, the state agency shall prepare a  
 35 statement of the economic impact of such proposed rule and regulation  
 36 or amendment upon all governmental agencies or units and all persons  
 37 which will be subject thereto and upon the general public. The economic  
 38 impact statement shall include: (1) A brief description of the proposed  
 39 rules and regulations and what is intended to be accomplished by their  
 40 adoption; (2) whether the proposed rule and regulation is mandated by  
 41 federal law as a requirement for participating in or implementing a fed-  
 42 erally subsidized or assisted program; (3) a description of the cost ~~capital~~ [ cost  
 43 ~~and annual costs of compliance with the proposed rules and regulations.]~~

1 the persons who will bear the costs and those who will be affected by the  
 2 proposed rules and regulations, including the agency proposing the rules  
 3 and regulations, other governmental agencies or units, private citizens  
 4 and consumers of the products or services which are the subject of the  
 5 rules and regulations or the enforcement thereof; <sup>(4)</sup> ~~[a description of the~~ — and  
 6 ~~initial and annual costs of implementing and enforcing the proposed rules~~  
 7 ~~and regulations, including the estimated amount of paperwork, and the~~  
 8 ~~state agencies, other governmental agencies or other persons or entities~~  
 9 ~~who will bear the costs; (5) [a description of the costs which would~~  
 10 ~~likely accrue if the proposed rules and regulations are not adopted,~~  
 11 ~~the persons who will bear the costs and those who will be affected~~  
 12 ~~by the failure to adopt the rules and regulations; (6)] a detailed~~  
 13 ~~statement of the data and methodology used in estimating the costs used~~  
 14 ~~in the statement; and (4) (6) [(7)] a description of any less costly or less~~  
 15 intrusive methods that were considered by the state agency for achieving  
 16 the stated purpose of the rules and regulations and why such methods  
 17 were rejected in favor of the proposed rules and regulations. *The state*  
 18 *agency shall may consult with other state agencies when preparing the*  
 19 *economic impact statement.* The state agency shall consult with the  
 20 League of Kansas municipalities, Kansas association of counties and the  
 21 Kansas association of school boards, as appropriate, when preparing the  
 22 economic impact statement of a proposed rule and regulation which in-  
 23 creases or decreases revenues of cities, counties or school districts or  
 24 imposes functions or responsibilities on cities, counties or school districts  
 25 which will increase their expenditures or fiscal liability. The state agency  
 26 shall reevaluate and, when necessary, update the statement at the time  
 27 of giving notice of hearing on a proposed rule and regulation and at the  
 28 time of filing a rule and regulation with the secretary of state. If a public  
 29 hearing was held prior to the adoption of the rule and regulation, a state  
 30 agency at the time of filing a rule and regulation with the secretary of  
 31 state shall include as a part of the economic impact statement a statement  
 32 specifying the time and place at which the hearing was held and the  
 33 attendance at the hearing. A copy of the current economic impact state-  
 34 ment shall be available from the state agency upon request by any party  
 35 interested therein.

36 (c) Upon request of the state rules and regulations board, the joint  
 37 committee on administrative rules and regulations or the chairperson of  
 38 either committee or board, the director of the budget shall review the  
 39 economic impact statement prepared by any state agency and shall pre-  
 40 pare a supplemental or revised statement. If possible, the supplemental  
 41 or revised statement shall include a reliable estimate in dollars of the  
 42 anticipated change in revenues and expenditures of the state. It also shall  
 43 include a statement, if determinable or reasonably foreseeable, of the

1 immediate and long-range economic impact of the rule and regulation  
 2 upon persons subject thereto and the general public. If, after careful  
 3 investigation, it is determined that no dollar estimate is possible, the state-  
 4 ment shall set forth the reasons why no dollar estimate can be given.  
 5 Every state agency is directed to cooperate with the division of the budget  
 6 in the preparation of any statement pursuant to this subsection when, and  
 7 to the extent, requested by the director of the budget.

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

28 Sec. 3. K.S.A. 77-420 is hereby amended to read as follows: 77-420.

29 (a) Every rule and regulation proposed to be adopted by any state agency,  
 30 before being submitted to the attorney general under this section, shall  
 31 be submitted to the secretary of administration for approval of its organ-  
 32 ization, style, orthography and grammar subject to such requirements as  
 33 to organization, style, orthography and grammar as the secretary may  
 34 adopt. Every rule and regulation submitted to the secretary of adminis-  
 35 tration under this subsection (a) shall be accompanied by a copy of any  
 36 document which is adopted by reference by the rule and regulation. Every  
 37 rule and regulation approved by the secretary of administration under  
 38 this subsection (a) shall be stamped as approved and the date of such  
 39 approval shall be indicated therein.

40 (b) Every rule and regulation proposed by any state agency which has  
 41 been approved by the secretary of administration as provided in subsec-  
 42 tion (a) before being adopted or filed shall be submitted to the attorney  
 43 general for an opinion as to the legality of the same, and the attorney

(e) In addition to the requirements of subsection (b) above, 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.

1 general shall promptly furnish an opinion as to the legality of the proposed  
2 rule and regulation so submitted. Every rule and regulation submitted to  
3 the attorney general under this subsection (b) shall be accompanied by a  
4 copy of any document which is adopted by reference by the rule and  
5 regulation. Every rule and regulation approved by the attorney general  
6 under this subsection (b) shall be stamped as approved and the date of  
7 such approval shall be indicated therein.

8 (c) No rule and regulation shall be filed by the secretary of state  
9 unless:

10 (1) The organization, style, orthography and grammar have been ap-  
11 proved by the secretary of administration;

12 (2) the rule and regulation has been approved in writing by the at-  
13 torney general as to legality;

14 (3) the attorney general finds that the making of such rule and reg-  
15 ulation is within the authority conferred by law on the state agency sub-  
16 mitting the same;

17 (4) the rule and regulation has been formally adopted by the state  
18 agency after it has been approved by the secretary of administration and  
19 the attorney general and is accompanied by a certified or other formal  
20 statement of adoption when adoption is by an executive officer of a state  
21 agency, or by a certified copy of the roll call vote required for its adoption  
22 by K.S.A. 77-421, and amendments thereto, when adoption is by a board,  
23 commission, authority or other similar body;

24 (5) the rule and regulation to be filed is accompanied by a copy of  
25 the economic impact statement as provided by K.S.A. 77-416, and amend-  
26 ments thereto;

27 (6) *the rule and regulation to be filed is accompanied by a copy of*  
28 *the environmental benefit statement required by K.S.A. 77-416 and*  
29 *amendments thereto, if applicable; and*

30 ~~(6)~~ (7) the rule and regulation is accompanied by a copy of any doc-  
31 ument which is adopted by reference by such rule and regulation unless  
32 specifically exempt by the state rules and regulations board pursuant to  
33 subsection (a) of K.S.A. 77-416, and amendments thereto.

34 Sec. 4. K.S.A. 77-421 is hereby amended to read as follows: 77-421.

35 (a) Prior to the adoption of any permanent rule and regulation or any  
36 temporary rule and regulation which is required to be adopted as a tem-  
37 porary rule and regulation in order to comply with the requirements of  
38 the statute authorizing the same and after any such rule and regulation  
39 has been approved by the secretary of administration and the attorney  
40 general, the adopting state agency shall give at least 30 days' notice of its  
41 intended action in the Kansas register and to the secretary of state. The  
42 notice shall be mailed to the secretary of state and published in the Kansas  
43 register. The notice shall contain: (1) A summary of the substance of the

1 proposed rules and regulations; (2) a summary of the economic impact  
2 statement indicating the estimated economic impact on governmental  
3 agencies or units, persons subject to the proposed rules and regulations  
4 and the general public; (3) *a summary of the environmental benefit state-*  
5 *ment, if applicable, indicating the need for the proposed rules and regu-*  
6 *lations;* (4) the address where a complete copy of the proposed rules and  
7 regulations and, the complete economic impact statement, *the environ-*  
8 *mental benefit statement, if applicable,* required by K.S.A. 77-416 and  
9 amendments thereto may be obtained; ~~(4)~~ (5) the time and place of the  
10 public hearing to be held; the manner in which interested parties may  
11 present their views; and ~~(5)~~ (6) a specific statement that the period of 30  
12 days' notice constitutes a public comment period for the purpose of re-  
13 ceiving written public comments on the proposed rules and regulations  
14 and the address where such comments may be submitted to the state  
15 agency. Publication of such notice in the Kansas register shall constitute  
16 notice to all parties affected by the rules and regulations.

17 (b) On the date of the hearing, all interested parties shall be given  
18 reasonable opportunity to present their views or arguments on adoption  
19 of the rule and regulation, either orally or in writing. When requested to  
20 do so, the state agency shall prepare a concise statement of the principal  
21 reasons for adopting the rule and regulation or amendment thereto.  
22 Whenever a state agency is required by any other statute to give notice  
23 and hold a hearing before adopting, amending, reviving or revoking a rule  
24 and regulation, the state agency may, in lieu of following the requirements  
25 or statutory procedure set out in such other law, give notice and hold  
26 hearings on proposed rules and regulations in the manner prescribed by  
27 this act. Notwithstanding the other provisions of this section, the Kansas  
28 parole board and the secretary of corrections, may give notice or an op-  
29 portunity to be heard to any inmate in the custody of the secretary of  
30 corrections with regard to the adoption of any rule and regulation, but  
31 the secretary shall not be required to give such notice or opportunity.

32 (c) When, pursuant to this or any other statute, a state agency holds  
33 a hearing on the adoption of a proposed rule and regulation, the agency  
34 shall cause written minutes or other records, including a record main-  
35 tained on sound recording tape or on any electronically accessed media  
36 or any combination of written or electronically accessed media records of  
37 the hearing to be made. If the proposed rule and regulation is adopted  
38 and becomes effective, the state agency shall maintain, for not less than  
39 three years after its effective date, such minutes or other records, together  
40 with a list of all persons who appeared at the hearing and who they rep-  
resented, any written testimony presented at the hearing and any written  
comments submitted during the public comment period.

43 (d) No rule and regulation shall be adopted except at a meeting which

1 is open to the public and notwithstanding any other provision of law to  
2 the contrary, no rule and regulation shall be adopted by a board, com-  
3 mission, authority or other similar body unless it receives approval by roll  
4 call vote of a majority of the total membership thereof.

5 Sec. 5. K.S.A. 77-420 and 77-421 and K.S.A. 1994 Supp. 77-415 and  
6 77-416 are hereby repealed.

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