

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 5, 2004 in Room 123-S of the Capitol.

All members were present except:
Senator Chris Steineger- absent

Committee staff present:
Kathie Sparks, Legislative Research
Susan Kannarr, Legislative Research
Helen Pedigo, Revisor of Statutes
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:
Gary White, Kansas Trial Lawyers Association
Wendell Bailey, U.S. Small Business Administration, Kansas City Regional Advocate
Hal Hudson, NFIB
Greg A. Foley, Asst Sec. Of Agriculture

Others attending:
See Attached List.

Chairperson Brownlee continued the hearing on:

SB 334—Limiting liability of persons involved in agritourism

The Chair asked if anyone else wanted to speak to the bill. She stated that the committee had heard testimony from the trial lawyers on the bill, and asked the audience if there were any additional amendments to the bill or anything they would like to add.

Senator Jordan stated that Scott Allegrucci has done a good job on putting a package together; he stated that he would like to know what is already budgeted in FY '05 for agritourism.

Mr. Allegrucci stated that there is no specific line for agritourism, except that currently in the first phase of agritourism initiative this year, there is about \$106,000 set aside for promoting agritourism development and marketing initiatives. He stated that they do not know what the next phase will be because the level of engagement has not yet been determined; agriculture products marketing division has already agreed to focus on agritourism going into FY '05 using some of their grants and loan packages. He stated that he did not know if there was a specific amount that would be dedicated to agritourism, nor how that would be specifically applied. He stated that at this time, he did not have the staff nor the expertise to go onto a farm and try to determine if it is marketable; he would need to hire another person or transition a staff position to pursue product development.

Senator Jordan stated that his point was that the administration has planned budgetwise to make something happen. Mr. Allegrucci agreed that there was a recognition that it was a priority, but that the allocations are not specifically set.

Chairperson Brownlee stated that she did not think that the bill included a requirement for on-site visits.

Mr. Allegrucci stated that his interpretation of the bill was that the Secretary of Commerce would be responsible for making a decision about the nature of these operations related to economic development potential.

Chairperson Brownlee stated that the bill indicated that the Secretary would review the application and consider whether they think the application will further the purpose of the act by promoting economic development in agritourism and that he would maintain a list of designated agritourism locations and the activities conducted at those locations and promote and publicize them. She stated that she thought it was

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on February 5, 2004 in Room 123-S of the Capitol.

more simple than needing a full FTE for them.

Mr. Allegrucci stated that the issue is that he does not have anyone qualified to do reviews except marketing staff, and he did not believe that they would have the experience and skills. He stated that he was uncertain of what would be expected of his division.

Chairperson Brownlee stated that it looked as though some things might be worked out in Rules and Regulations, but that it may just be that the application requires pictures.

Chairperson Brownlee asked for additional questions, and there were none. Chairperson Brownlee invited Mr. Gary White, Kansas Trial Lawyers, to have an opportunity to answer questions from the committee since there had not been adequate time for this the previous day.

Mr. White stated that there were a couple of issues including the agritourism industry's concern about the availability of insurance and whether they have insurance. He stated that this was a concern that still had not been answered. He stated that the issues would include: whether the farm policy is issued in the state of Kansas and whether master farm policies would cover agritourism activities. He stated that if this was the case, then they would already have coverage. He also stated that insurance companies who write master farm policies in Kansas should be mandated to at least offer a rider for agritourism activities. He stated that if insurance costs did increase, it would be important to study if this would be an appropriate application of tax credits. He concluded that another issue suggested last year would be to create a self-insurance pool that would provide protection to consumers injured on these properties. He stated that policy details should be laid out in a brochure from the Insurance Commissioner's office.

Chairperson Brownlee closed the hearing on **SB 334**.

Senator Jordan described the history of the bill to the committee, outlining compromises that had been made by both sides in an effort to produce a palatable bill.

Following further discussion, Senator Jordan stated that the bill was significantly supported by the Senate last session and that this was a good compromise bill. Senator Jordan moved to amend the bill according to the KLA amendment tying back to the recreational use statutes; Senator Wagle seconded. The motion passed.

Senator Barone moved to the end of paragraph d, p. 2, line 31 following applicant to insert that "if the secretary has not approved or denied the application 30 days after the application is filed, then the designation shall be deemed granted for a period of 5 years." Senator Emler seconded. The motion passed.

Senator Emler asked if the committee needed to specify that the intent of the bill was not to require an on-site visit. Senator Bunten stated that any bill with a fiscal note would end up in Ways and Means. He suggested that the committee contact the Chair of the subcommittee on Commerce (Senator Kerr). Senator Kerr stated that it would not be necessary since he was that Chair.

Senator Barone moved to change the word wanton for willful; Senter Emler seconded.

Senator Jordan stated that he respected what Senator Barone was asking, but he was reluctant to change the language given the way the bill was written.

The motion failed.

Senator Jordan moved the bill favorably as amended; Senator Brungardt seconded. The motion passed.

Chairperson Brownlee opened the public hearing on:

SB 375-Kansas regulatory flexibility act

Mr. Bailey presented testimony to the committee in favor of the bill. (Attachment 1) He also provided the committee with a news release from the SBA Office of Advocacy. (Attachment 2) The committee received

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on February 5, 2004 in Room 123-S of the Capitol.

two publications from the SBA: a pamphlet about the SBA, and a booklet entitled, "Small Business Friendly Regulation: Model Legislation for States, December 2002" both of which are available from the SBA or are available at <http://www.sba.gov/advo/>. He stated that the impact of legislation on Small Business should be taken into account before the implementation of new regulations and that this would parallel procedures and considerations already taken into account on the federal level. He explained that judicial review, which currently does not exist in Kansas, allows businesses who have exhausted administrative remedies and small business has agreed, they can take it into the judicial system. He also stated that in times of economic recovery, small business created two-thirds of the new jobs.

Senator Brungardt stated that the Federal government often takes a one-size fits all approach, so he could see a reason they would need to take small business into special account; however, in the state of Kansas most all business was small business. He stated that this legislation seemed to stretch credibility by enacting less stringent files and reporting, deadlines, and consolidation of reporting, which seemed to encompass 90% of what the Legislature does, then what is the point? Mr. Bailey replied that the point was to try and eliminate overly burdensome regulations. He gave examples of regulations at both the Federal and local levels as being too heavy. He stated that it was an attempt to create a dialog between small businesses and the regulatory process that does not exist today. Senator Brungardt stated that more than dialog, the idea to demand court review seems to go far beyond, but that he thought it was a nice reminder to government to keep small businesses in mind and the impact legislation can have, but that he could not imagine putting this into state law.

Mr. Hudson presented testimony in favor of the bill. (Attachment 3) He stated that the legislation would give small business owners greater input into regulations, and that is was the rules and regulations of administration, not the laws of the legislature, that caused angst.

The committee was referred to another attachment provided by Mr. Bailey entitled "Office of Advocacy Fact Sheet." (Attachment 4)

Mr. Foley presented testimony in opposition to the bill. (Attachment 5)

Written testimony was provided from Theresa Hodges, Director, Bureau Environmental Field Services, KDHE, in opposition to the bill. (Attachment 6) Her testimony stated that overall, the department believes this bill establishes redundant requirements for the agency's adoption of rules and regulations. The impacts of this bill are far-reaching, with significant fiscal impacts on all agencies having rules and regulations authority and with significant legal impacts on the regulated business community as a whole.

Written testimony was provided from Natalie Bright, Wichita Independent Business Association, in support of the bill. (Attachment 7) Her testimony stated that in response to a recent survey of their members, the most common response to how the Legislature could help grow small business was to reduce the amount of regulatory burden on their businesses.

Written testimony was provided by Christopher J. Tymeson, Chief Legal Counsel, Kansas Department of Wildlife and Parks, in opposition to the bill. (Attachment 8)

Chairperson Brownlee adjourned the meeting at 9:30 a.m. The next meeting will be at 8:30 a.m. on February 6, 2004 in Room 123-S of the Capitol.

Small Business by the Numbers

Answers to Frequently Asked Questions

What is a small business?

The Office of Advocacy defines a small business for research purposes as an independent business having fewer than 500 employees. Firms wishing to be designated small businesses for government programs such as contracting must meet size standards specified by the Small Business Administration (SBA) Office of Size Standards. These standards vary by industry; see www.sba.gov/size.

How important are small businesses to the U.S. economy?

Small firms

- Represent more than 99.7 percent of all employers.
- Employ more than half of all private sector employees
- Pay 44.5 percent of total U.S. private payroll.
- Generate 60 to 80 percent of net new jobs annually.
- Create more than 50 percent of nonfarm private gross domestic product (GDP).
- Supplied 22.8 percent of the total value of federal prime contracts (about \$50 billion) in FY 2001.
- Produce 13 to 14 times more patents per employee than large patenting firms. These patents are twice as likely as large firm patents to be among the one percent most cited.
- Are employers of 39 percent of high tech workers (such as scientists, engineers, and computer workers).
- Are 53 percent home-based and 3 percent franchises.
- Made up 89 percent of all identified exporters and produced 20 percent of the known export value in FY 2001.

Sources: U.S. Bureau of the Census; Advocacy-funded research by Joel Popkin and Company (Research Summary #211); Federal Procurement Data System; Advocacy-funded research by CHI Research, Inc. (Research Summary #225); Bureau of Labor Statistics, Current Population Survey; U.S. Department of Commerce, International Trade Administration.

How many small businesses are there?

In 2002, there were approximately 22.9 million businesses in the United States, according to Office of Advocacy estimates. The Internal Revenue Service (IRS) estimates there were 26.4 million business tax returns in 2002; however, this number may overestimate the number of firms, as one business can operate more than one taxable entity.

IRS estimates the number of sole proprietorships (roughly equivalent to nonemployers) increased by 1.9 percent in 2001 and by 2.7 percent in 2002. Census data show there were 5.7 million firms with employees and 16.5 million without employees in 2000. Applying the sole proprietorship growth rates to the nonemployer figures and similar Department of Labor growth rates to the employer figures produces the 22.9 million figure.

How many businesses open and close each year?

Estimates for businesses with employees indicate there were 550,100 new firms and 584,500 closures (both about 10 percent of the total) in 2002.

Starts and Closures of Employer Firms, 1990-2002

Category	1990	1995	2000	2001	2002
New Firms	584,892	594,369	574,300	545,400e	550,100e
Firm Closures	531,892	497,246	542,831	568,300e	584,500e
Bankruptcies	63,912	50,516	35,472	39,719	38,155

e = Estimate using percentage changes in similar data provided by the U.S. Department of Labor, Employment and Training Administration

Sources: U.S. Bureau of the Census; Administrative Office of the U.S. Courts; U.S. Department of Labor, Employment and Training Administration.

How many new jobs do small firms create?

In 1999-2000 (according to the most recent data), small businesses created three-quarters of U.S. net new jobs (2.5 million of the 3.4 million total). The small business share varies from year to year and reflects economic trends. Over the decade of the 1990s, small business net job creation fluctuated between 60 and 80 percent.

Moreover, according to a new Bureau of the Census working paper, start-ups in the first two years of operation accounted for virtually all of the net new jobs in the economy.

Sources: U.S. Bureau of the Census; Administrative Office of the U.S. Courts; *Endogenous Growth and Entrepreneurial Activity in Cities* by Zoltan J. Acs and Catherine Armington, Center for Economic Studies, U.S. Bureau of the Census, Working Paper #CES-WP-03-2, January 2003.

The SBA's Office of Advocacy was created by an act of Congress in 1976 to protect, strengthen, and effectively represent the nation's small businesses within the federal government. As part of this mandate, the office conducts policy studies and economic research on issues of concern to small business and publishes data on small business characteristics and contributions. For instant access to small business resources, statistics, and research, visit the Office of Advocacy's home page at <http://www.sba.gov/advoc>.

What is small firms' share of employment?

The small business share of employment has remained steady at 50 percent. Although small firms create more than half of net new jobs, some small firms will become large firms as new jobs are created. Of 114.1 million nonfarm private sector workers in 2000, small firms with fewer than 500 workers employed 57.1 million, large firms, 56.9 million. Smaller firms with fewer than 100 employees employed 40.9 million.

What is the survival rate for new firms?

Two-thirds of new employer firms survive at least two years, and about half survive at least four years. Owners of about one-third of the firms that closed said their firm was successful at closure. Major factors in a firm's remaining open include an ample supply of capital, the fact that a firm is large enough to have employees, the owner's education level, and the owner's reason for starting the firm in the first place, such as freedom for family life or wanting to be one's own boss.

Business survival also varies by industry and demographics. The industry with the highest 1992-1996 survival rate for firms owned by white non-Hispanics was oil and gas extraction (82 percent survival rate over the four-year period). African Americans were most successful in legal services (79 percent), and Hispanic and Asian Americans in health services (66 percent and 76 percent, respectively).

Sources: *Business Success: Factors Leading to Surviving and Closing Successfully* by Brian Headd, Center for Economic Studies, U.S. Bureau of the Census, Working Paper #CES-WP-01-01, January 2001; Advocacy-funded research by Richard J. Boden (Research Summary #204).

How are small businesses financed?

About 82.5 percent of small firms used some form of credit in 1998. Small firms use many different sources of capital, including their own savings, loans from family and friends, and business loans from financial institutions. Credit cards, credit lines, and vehicle loans are the most often used types of credit. Commercial banks are the leading suppliers of credit, followed by owners and finance companies.

Small Firms using Financial Services, 1998
(Percent reporting use of various types of credit)

Credit Type	Total Small Business	Women-Owned	Minority- and Hispanic-Owned
Any Credit	82.5%	78.2%	76.9%
Traditional Credit Types	55.0	46.1	49.0
Business Credit Cards	34.1	28.8	28.6
Personal Credit Cards	46.0	47.5	45.5

Source: Tabulation from Survey of Small Business Finances, 1998, from the Federal Reserve Board.

What role do women, minority, and veteran entrepreneurs play in the economy?

• Women owned 5.4 million businesses that generated \$819 billion in revenues, employed more than 7 million workers,

and had nearly \$150 billion in payroll in 1997. About three-quarters were sole proprietorships with receipts under \$50,000.

- Of U.S. firms in 1997, 5.8 percent were owned by Hispanic Americans, 4.4 percent by Asian Americans, 4.0 percent by African Americans, and 0.9 percent by American Indians. Of total minority-owned business receipts, Asian American-owned businesses earned more than 51 percent; Hispanic Americans, 31 percent; African Americans, 12 percent; and American Indians, 6 percent.
- Veteran self-employed people numbered about 1.6 million or 14 percent of all U.S. self-employed in 2001.

Sources: Advocacy publications - *Women in Business, 2001*; *Dynamics of Women-Operated Sole Proprietorships, 1990-1998*; *Minorities in Business, 2001*; veteran self-employment data from a special tabulation of the Current Population Survey.

How do regulations affect small firms?

Very small firms with fewer than 20 employees spend 60 percent more per employee than larger firms to comply with federal regulations. Small firms spend twice as much on tax compliance as their larger counterparts.

Cost of Federal Regulations by Firm Size, All Business Sectors (Dollars)

Type of Regulation	Cost per Employee for Firms with: <20 Employees	500+ Employees
All Federal Regulation	\$6,975	\$4,463
Environmental	3,328	717
Economic	1,616	2,485
Workplace	829	698
Tax Compliance	1,202	562

Source: *The Impact of Regulatory Costs on Small Firms*, an Advocacy-funded study by W. Mark Crain and Thomas D. Hopkins, August 2001 (Research Summary #207).

Whom do I contact about regulations?

To submit comments on proposed regulations, send email to advocacy@sba.gov. To follow up on regulatory enforcement issues, email regfair@sba.gov.

How can I get more information?

For more detailed information from the Office of Advocacy, visit www.sba.gov/advo/. Sign up at <http://web.sba.gov/list> for email delivery of news releases, *The Small Business Advocate* newsletter, small business research findings and statistics, and regulatory communications.

Office of Advocacy economic research can be found at www.sba.gov/stats. Specific points of interest include:

- Firm size data (static/dynamic for the U.S., states and metropolitan statistical areas): www.sba.gov/advo/stats/data.html
- Small firm lending studies (1994-present): www.sba.gov/advo/stats/lending
- State economic profiles (1998-present): www.sba.gov/advo/stats/profiles
- *The Small Business Advocate* monthly newsletter (1996-present): www.sba.gov/advo/news/

Direct other questions to (202) 205-6533 or via e-mail to advocacy@sba.gov.



OFFICE OF ADVOCACY NEWSRELEASE

..ndell
Bailey

409 3rd Street, SW λ MC 3114 λ Washington, DC 20416 λ 202/205-6533 ph. λ 202/205-6928 fax λ www.sba.gov/advo

For Release: January 23, 2004
SBA Number: 04-03 ADVO

Contact: John McDowell
(202) 205-6941
john.mcdowell@sba.gov

Small Businesses Save Over \$6 Billion **Result From Agencies Rethinking How Regulations Affect Small Business**

WASHINGTON, D.C. – American small businesses enjoyed \$6 billion in cost savings last year, due to the efforts of the Office of Advocacy of the U.S. Small Business Administration. That money would have gone to comply with overly burdensome federal regulations had not Advocacy worked with federal agencies to find effective and less burdensome regulatory alternatives.

“We’ve noticed an increase in the number of agencies that make a good faith effort to comply with the Regulatory Flexibility Act,” said Thomas M. Sullivan, Chief Counsel for Advocacy. “By choosing less burdensome alternatives they are able to meet regulatory goals without endangering job-creating small businesses. We will continue to work with federal agencies to ensure that they follow the law and listen to the voice of small business early in their regulatory process,” he said.

The 2003 compliance cost savings allowed thousands of small businesses to remain open. The savings also allowed thousands of others to invest in new jobs, equipment, or other resources.

The *Report on the Regulatory Flexibility Act, FY 2003* details forgone regulatory compliance costs, as well as an overview of federal agency adherence to the law requiring consideration of regulatory alternatives. The report was formally presented to Congress yesterday.

The report also reviews agency compliance with President Bush’s Executive Order 13272, which directs federal agencies to work closely with the Office of Advocacy when considering their regulatory affect on small business. The Executive Order puts new emphasis on how regulatory relief can help small business. “We expect even greater savings once the Executive Order is fully implemented next year,” said Sullivan

The Office of Advocacy, the “small business watchdog” of the government, examines the role and status of small business in the economy and independently represents the views of small business to federal agencies, Congress, and the President. It is the source for small business statistics presented in user-friendly formats and it funds research into small business issues.

For more information and a full copy of the report, visit the Office of Advocacy website at www.sba.gov/advo.

###

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional Advocates and an office in Washington, DC, support the Chief Counsel’s efforts. For more information on the Office of Advocacy, visit www.sba.gov/advo, or call (202) 205-6533.

Senate Commerce
02/05/04
Attach #2



KANSAS

**Statement by
Hal Hudson, State Director
National Federation of Independent Business
Before the Senate Commerce Committee
Re: SB 375
Thursday, February 5, 2004**

Madam Chairperson and member of the Committee:

Thank you for this opportunity to support Senate Bill 375, establishing the Kansas Regulatory Flexibility Act.

On behalf of the nearly 6,000 small business owner-members of NFIB, I want to say this measure is a move in the right direction – giving small business owners an opportunity to have greater input into the regulatory process in Kansas.

The bill before you is similar to a model bill supported by ALEC, SBA, NFIB, and others. It also mirrors the federal legislation enacted by the U.S. Congress several years ago, imposing similar requirements on all federal agencies.

SB 375 is important because it would require state agencies to consider the impact of any rule or regulation on small businesses of this state prior to adoption.

It would allow a small business that is adversely impacted by final action of any agency to seek judicial review of the agency's compliance with this act.

SB 375 would require Kansas state agencies to review existing regulations with regard to their complexity, and the extent to which any rule or regulation overlaps, duplicates or conflict with other federal, state and local rules and regulations.

This is an act intended to help small businesses deal with the paperwork and red tape of government regulations, so they can spend more time doing what they do best – creating jobs for Kansans.

We urge you to support enactment of SB 375.

Small Business Friendly Legislation By the Numbers

Wendell
Bailey

7 States and 1 Territory have active regulatory flexibility statutes

- Arizona
- Hawaii
- Nevada
- Oklahoma
- Connecticut
- Michigan
- New York
- Puerto Rico

5 States have newly enacted statutes or executive orders

Executive Orders

- Massachusetts
- Missouri
- West Virginia

Statutes

- Colorado
- North Dakota

2 States have pending regulatory flexibility legislation

- New Jersey (Passed Senate 36-0, in Assembly Committee)
- Wisconsin (Passed Assembly 64-33, Senate 22-11, sent to Governor 11/17/03)

23 States have partial or partially used regulatory flexibility statutes

- California
- Delaware
- Florida
- Georgia
- Illinois
- Indiana
- Iowa
- Kentucky
- Maine
- Maryland
- Minnesota
- Mississippi
- New Hampshire
- North Carolina
- Ohio
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- Texas
- Utah
- Vermont
- Washington

13 States, 2 Territories and the District have no regulatory flexibility statutes

- Alabama
- Alaska
- Arkansas
- Washington D.C.
- Guam
- Idaho
- Kansas
- Louisiana
- Montana
- Nebraska
- New Mexico
- South Dakota
- Tennessee
- Virgin Islands
- Virginia
- Wyoming¹

12 States had regulatory flexibility bills introduced in the 2003 legislative session

- Colorado (signed into law)
- Georgia (died in session)
- Missouri (vetoed by Gov.)
- New Jersey (still in session)
- North Carolina (died in session)
- North Dakota (signed into law)
- Oregon (died in session)
- Rhode Island (died in session)
- South Carolina (died in session)
- Texas (died in session)
- West Virginia (died in session)
- Wisconsin (sent to Gov.)

¹ The Wyoming Assembly approved a 2003 Interim Study on state regulatory flexibility initiatives.

Senate Commerce
December, 2003
02/05/03
Attach #4



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Senate Commerce Committee

February 5, 2004

Testimony on Senate Bill 375

Assistant Secretary of Agriculture Greg A. Foley

Good morning, Chairperson Brownlee and members of the committee. My name is Greg Foley, I am the assistant secretary of agriculture, and I appreciate the opportunity to be here to address concerns the department has with Senate Bill 375.

The Kansas Department of Agriculture has several concerns with SB 375. Our concerns include:

- many KDA program implementation fees are established in regulation;
- the potential impact this bill has on the agency's ability to implement statutory mandates;
- and the fiscal impact on our agency because this bill will require additional staff and slow down the regulation development process.

We are sensitive to small businesses and concerns associated with regulatory program implementation. Our department promulgates regulations according to current administrative procedures. However, in addition to that process, we have intensive stakeholder involvement prior to the start of each formal process. The stakeholder group involvement allows us to explain proposed changes, discuss specific language and how it is an extension of authorizing statutes, and to address any impacts and concerns that are raised.

KDA is primarily a regulatory agency. We implement many statutes that include water right administration, stream obstruction permitting, dairy inspection, meat and poultry inspection, pesticide registration and use inspection, petroleum quantity and quality inspection, the inspection of scales and scanners, and the list goes on. Regulations require statutory authority to empower and enable the agency to provide the implementation guidelines for Kansans for fair and equitable treatment.

We are diligent in evaluating regulations to ensure that the regulation articulates the procedure to implement a given body of law and that regulations are not treating a symptom but are focused on a problem.

The KDA fiscal year 2004 budget was approximately \$21.4 million dollars, which \$9.5 million of which came from state general funds, 7.8 million from fees and most of the remainder from federal sources. One could easily argue that any fee imposed on a small business could be an adverse impact and, therefore, subject to litigation or repeal. The passage of SB 375 presents the Legislature and agencies with a difficult decision regarding food safety, consumer protection, water resource management and environmental protection, all of which are important and merit funding. If fees are deemed an adverse impact, additional state general funds will be required to carry out our statutory responsibilities.

We respectfully request that careful review be given to statutory mandates to agencies to provide services to Kansans. SB 375 will significantly impact many agencies' ability to carry out their statutory directives.

Thank you for your time and consideration.



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on Senate Bill 375
Small Businesses and Regulatory Flexibility**

presented to

Senate Commerce Committee

by

Theresa Hodges, Director, Bureau of Environmental Field Services
February 5, 2004

The Kansas Department of Health and Environment (KDHE) appreciates this opportunity to present testimony in opposition to Senate Bill 375. The bill proposes to require a state agency to evaluate whether its proposed regulations adversely impact small businesses. To minimize the impact of regulation on small businesses, the bill requires the agency to consider several less stringent regulatory requirements and exempting small businesses from all or part of the regulation. The bill entitles a small business adversely affected to judicial review of the agency's compliance with the evaluation requirements. The bill further requires the agency to conduct this evaluation for all existing agency rules and regulations within four years of the date of enactment and every five years thereafter.

Overall, the department believes this bill establishes redundant requirements for the agency's adoption of rules and regulations. The impacts of this bill are far-reaching, with significant fiscal impacts on all agencies having rules and regulations authority and with significant legal impacts on the regulated business community as a whole.

KDHE believes that existing state law, K.S.A. 2003 Supp. 77-416, provides adequate safeguards to ensure that agency rules and regulations do not adversely impact small businesses. This law requires the agency to prepare an economic impact statement and if the regulation is of an environmental nature, an environmental benefit statement. The agency currently evaluates the cost of the regulation to the regulated business, the agency itself, other governmental agencies, private citizens, and consumers of the regulated products or services. For environmental regulations, K.S.A. 2003 Supp. 77-416 also requires KDHE to provide additional detailed cost analyses to address compliance, implementation, and enforcement costs, and the costs that would accrue if the regulation was not adopted.

Included in the economic impact analysis required by K.S.A. 2003 Supp. 77-416 is a requirement that the impact statement specify whether the "regulation is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program" and whether the regulation exceeds the requirements of the federal law. SB 375 includes no such evaluation. Instead it requires the agency to consider adopting less stringent compliance or reporting requirements and lower standards for small businesses or exempting small businesses altogether from these requirements. With respect to KDHE's environmental programs, the adoption of SB 375 could result in the loss of the state's federal program delegation and, therefore, the flexibility of state regulation.

Adoption of SB 375 would potentially benefit small businesses at the expense of the Kansas environment. Environmental regulations are designed to control the level of risk of harmful contaminants that reach Kansans and their environment. To the extent a business uses harmful contaminants in its operations, the potential for environmental harm exists regardless of the business's size. For example, a large landfill would meet the definition of "small business" as would nearly all plating businesses.

If SB 375 is adopted, KDHE is concerned about the ability to identify the universe of small businesses as defined in the bill. To implement the changes in the proposed regulation approval process, KDHE anticipates that in FY 2005 it would have to employ 7.0 additional FTE positions at a cost of \$399,603.00, which includes startup costs. Costs in subsequent years would be slightly less.

KDHE believes that the current statutory scheme, K.S.A. 77-416 *et seq.*, adequately protects small businesses in Kansas from adverse impacts associated with an agency's adoption of rules and regulations. In an effort to inform businesses of the potential risks involved in their operations, KDHE currently aids businesses through technical assistance provided during the course of compliance inspections. In conjunction with Kansas State University, KDHE operates a Small Business Environmental Assistance Program (SBEAP) from which small businesses can seek assistance anonymously and at no cost.

Thank you for your time and consideration.

Natalie Bright

Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Testimony on SB 375
Written Testimony Submitted to the
Senate Committee on Commerce
February 5, 2004

Chairman Brownlee and Honorable Committee Members,

I am Natalie Bright and I am appearing on behalf of the Wichita Independent Business Association in support of SB 375, the Kansas Regulatory Flexibility Act.

A few of weeks ago, I shared with this committee the result of WIBA's most recent member survey. You will recall one of the questions we asked our members was to tell us what the Kansas Legislature could do to assist in helping them grow their business. Overwhelmingly, the most common response from our members was to reduce the amount of regulatory burden on their business. As such, we are pleased you are considering this piece of legislation.

So often, legislation is passed with the best of intentions and not until it is actually implemented is the full, dynamic impact understood. The most recent example, and perhaps the most controversial in decades, is the implementation of destination sourcing. By requiring the agency charged with enforcing the regulation to fully study the impact that proposed regulations will have on the small business community, and require that it not be too burdensome on Kansas small businesses, all Kansans will benefit from a more responsive and fair regulatory environment.

Thank you for the opportunity to submit written testimony in favor of SB 375.

415 S. Main Street / Wichita, KS 67202-3719
316-267-8987 / 1-800-279-9422 / FAX 316-267-8964 / E-mail: info@wiba.org / Web Site:
www.wiba.org

Senate Commerce
02/05/04
Attach # 7

KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 375 Relating to Kansas Regulatory Flexibility Act
To
Senate Committee on Commerce

By Christopher J. Tymeson
Chief Legal Counsel
Kansas Department of Wildlife and Parks

5 February 2003

SB 375 provides for the creation of the Kansas Regulatory Flexibility Act. The bill would require state agencies, boards, commissions, department or officers to prepare an additional economic impact statement prior to the adoption of any proposed rule and regulation that may have an impact on small businesses, defined as independently owned and operated with fewer than 100 full-time employees or has gross annual sales of less than \$3,000,000. Additionally, any small business that is adversely affected or aggrieved by final agency action would be entitled to have cause of action for judicial review in district court. Finally, the bill would require the review of all existing agency regulations in a manner consistent with the provisions of the bill and review of all regulations every five years after promulgation.

Current regulatory promulgation has many legal requirements already in place including: stamped approval of draft regulations by the Department of Administration and the Attorney General's Office, submission of the approved regulation and an economic impact statement to the Secretary of State's Office for publication in the Kansas Register 60 days in advance of a public hearing, hearing on the regulation by the Joint Committee on Administrative Rules and Regulations, the actual public hearing itself, additional review by the DOA and AG if amended at public hearing, submission of the approved regulation and affidavit of adoption to the Secretary of State for additional publication in the Kansas Register. Then and only then, 15 days after publication in the Kansas Register does the regulation become effective. In addition, regulations that are classified as an environmental rule or regulation such as the state threatened or endangered species regulations require an additional environmental benefit statement prior to promulgation.

The Department of Wildlife and Parks promulgates regulations based on scientific and biological data as well as safety and societal concerns. These regulations are designed to allow for the sustainable harvest of fish and wildlife, proper use of public natural resources areas like state parks and safe recreational boating. Consequently, in amending these regulations, there may be both a positive and negative economic impact on small businesses. By way of example, something as simple as stopping hunting season a week earlier than the previous year can have a negative or adverse fiscal impact on any number of small businesses including but certainly not limited to gas stations, cafés, motels, hotels, bed and breakfasts, guides, outfitters, ranching and farming operations, bait shops, sporting goods stores or restaurants. In addition, the Department currently goes beyond

Office of the Secretary

1020 S Kansas Ave., Ste. 200, Topeka, KS 66612-1327

Phone 785-296-2281 Fax 785-296-6953 www.kdwp.state.ks.us

Senate Commerce
02/05/04
Attach #8

legal requirements and considers such impacts by reviewing potential regulatory changes at three consecutive statewide public hearings prior to enactment, allowing ample opportunity for public comment.

Certainly the Department is concerned with the economic benefit derived by small business from hunting, fishing, park use and boating. However, the Department is charged with managing wildlife, parks and boating in the public interest and the public interest does not always converge on the same path with the economic welfare of small businesses, particularly when managing species for their very existence.

In summary, the Department is opposed to the enactment of SB 375 and it is believed that the process whereby regulations are promulgated already contains procedural safeguards designed to allow sufficient input from small businesses, in addition to advocating changes in state statutes, and the provisions allowing for judicial review of enacted department regulations would be contrary to judicial economy of the already burdened system.