



TESTIMONY

TO: HOUSE COMMERCE COMMITTEE

FROM: CAMERON MCGOWN, PRESIDENT-ELECT
AMERICAN COUNCIL OF ENGINEERING COMPANIES OF KS

RE: HB 2123

DATE: FEBRUARY 1, 2023

Mr. Chairman, members of the Committee, thank you for the opportunity to appear today. My name is Cameron McGown, and I am here today on behalf of ACEC Kansas, the trade association representing private consulting engineering companies in Kansas. We are here as a “neutral” conferee today, as we applaud many of the efforts of this bill in promoting an entrepreneurial spirit in Kansas, but we have very serious concerns about one specific section.

Let me start by saying as an organization representing private sector businesses which were all built by true entrepreneurs, we fully appreciate the benefits of nurturing that spirit to attract and retain businesses and the talented people needed to start them in Kansas. Many of the provisions contained will help reduce red tape and provide resources for these aspiring startups, and we support those efforts.

Let me also add that we recognize this bill uses the word “encourage” and in so doing does not lay out any statutory requirements or call for any specific sanctions on unmet targets. All the same, we think the bill would be much stronger and avoid possible negative consequences with the deletion of one specific provision.

Our concerns are with section 3(a). This section encourages 5% of state work to be awarded to businesses that have been in operation for less than five years and whose principal place of business is in the state of Kansas. While well-intended, this section raises several critical issues.

One of the most serious is that many federal dollars disallow the use of location-based criteria. Putting an encouragement into state statute to consider where a company is based as part of selection criteria would seriously jeopardize many federal funding streams. This is money that would simply be left on the table for other states to compete for while Kansas misses out on that investment.

Speaking specifically to engineering and other professional design services, state agencies are currently letting so many projects that if anything they need more firms competing for those opportunities. Finding enough businesses to qualify for that “other” 5% of work would be an even greater struggle. It is unclear if there are enough businesses meeting the listed criteria to even be able to fill that 5% space. If you have not had the chance to hear from state agencies about this situation, we strongly encourage you to have those conversations as we are confident they will share that same concern.

We also have a concern that neighboring states will see this as something they need to respond to by passing similar legislation. This risks starting a tit-for-tat situation where Kansas businesses which currently compete and work seamlessly across state borders are now disadvantaged in pursuing work in other states. These Kansas-based businesses pay all variety of taxes to Kansas through their locally based offices and employees, and damage to their business would equal damage to state tax revenues. With so much work available and businesses expanding and considering a variety of locations, this would detract from the appeal of Kansas as a landing spot for those investments.

There are also critical questions of interpretation that are not clear under the language of this bill. Is the 5% target simply for all state contracts, and could be met by meeting 5% of the total regardless of which services make up that 5%? Is it 5% per state agency? 5% per type of service procured? Also, do subconsultants count towards the 5%? Currently one of the most common way newer firms get work is to be brought on board as a subconsultant to a more established firm who may get the main contract. This provides an invaluable way for those newer firms to gain experience and grow to compete for projects on their own. Would the dollars flowing to those subconsultants count towards the 5%?

Even if answers to the questions above were clarified, the fundamental issues still remain. With that in mind, we are here to respectfully request the Committee remove section 3(a) from the bill before considering passage of HB 2123. That would be our recommended approach. In lieu of this, we would ask that consideration be given to exempting professional design services from the proposed legislation.

Thank you for the opportunity to appear today, and I would be happy to stand for questions at the appropriate time.