

Approved: 03/11/94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairman Rochelle Chronister at 1:00 p.m. on March 3, 1994 in Room 514-S of the Capitol.

All members were present except: none

Committee staff present: Alan Conroy, Legislative Research Department  
Laura Howard, Legislative Research Department  
Paul West, Legislative Research Department  
Jim Wilson, Revisor of Statutes  
Jerry Cole, Committee Secretary  
Sharon Schwartz, Administrative Assistant

Conferees appearing before the committee:

Rep. Don Rezac, Sixty-first district  
Tom Slattery, Associated General Contractors of Kansas  
Larry Farrar, Utility Contractors, Inc.  
Dean Ferrell, Ferrell Construction of Topeka, Inc.  
David Fritchen, Assistant Professor Kansas State University Architectural Engineering Department  
Bill Cohen, CEO-Insurance Management Associates, Inc.  
Jim Jones, Kansas Department of Transportation  
Chris McKenzie, League of Kansas Municipalities  
Bill Curtis, Kansas Association of School Boards

Others attending: See attached list

Chairman Chronister asked for a motion approving the minutes of February 21, 23 and 24 if there were no additions or corrections. Rep. Helgerson made the motion, seconded by Rep. Pottorff and carried.

Rep. Don Rezac appeared before the committee to briefly explain a drafted bill on retirement benefits. He asked the committee for introduction of the bill. Rep. Carmody made a motion to introduce the bill. Rep. Helgerson seconded the motion and it carried.

Hearings were opened on **HB 3022**. Tom Slattery, Associated General Contractors of Kansas, was the first conferee favoring the legislation and asking for its passage. (See Attachment 1). Larry Farrar, Utility Contractors, Inc., followed up saying the bill was in the best interests of the contractor and the contracting authority. (See Attachment 2). Dean Ferrell, Ferrell Construction of Topeka, Inc., appeared as a proponent and told the committee the bill would allow contractors to withdraw their bids for mistakes in bids like number transpositions. (See Attachment 3). David Fritchen, Asst. Professor KSU Architectural Engineering, spoke in favor of the bill telling committee members the legislation was mutually beneficial for the state and the construction industry. (See Attachment 4). Bill Cohen, Insurance Management Associates, Inc. was the final proponent and said the bill should be passed simply in the interests of fairness. (See Attachment 5). The first opponent of the bill was Jim Jones, KDOT Director of Operations. Jones said KDOT was not in favor of passing the bill as it would then give contractors the opportunity for manipulating bids for Department of Transportation projects. (See Attachment 6). Chris McKenzie, League of Kansas Municipalities, spoke against passage and said the bill would shift the responsibility of locating and notification of bid errors to the public agency. He asked that if it were passed, municipalities be exempted. (See Attachment 7). Bill Curtis, Kansas Association of School Boards, was the final conferee and spoke against the bill as well. Curtis said he was not opposed to the concept of the legislation, but was adamantly opposed to the bidders ability to impose injunctions. (See Attachment 8). The hearings were closed.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS, Room 514-S of the Capitol, at 1:00 p.m. on March 3, 1994.

Rep. Mead's subcommittee was to report to the full committee with recommendations for **HB 2929**. All subcommittee members participated in the presentation of the recommendations to committee. (See Attachment 9). Rep. Mead gave the minority report. Chairman Chronister asked research staff to compile a table with items added to the report by their original sponsors illustrating which items SRS (Department of Social and Rehabilitation Services) was in agreement with. Rep. Helgersen added to the request. He wanted SRS's full recommendations to be included, also. Jim Wilson, Revisor of Statutes, had amendments prepared for **HB 2188**. The amendments dealt with the KanLearn Program and was to be included in HB 2929. (See Attachment 10). The Chairman announced that the full committee would again take up discussion on HB 2929 Friday, March 11 at 7:00 a.m.

The written testimony of Charles Grier, President of Utility Contractors, Inc. was given to the committee in favor of **HB 3022**. (See Attachment 11). Grier was unable to attend the meeting.

The meeting was adjourned at 3:15 p.m. The next meeting is scheduled for March 8, 1994.

# 1994 Appropriation Committee Guest List

1	NAME	ORGANIZATION
2	Iris Jones	KDOT Topeka
3	Dean M. Testa	KDOT Topeka
4	Cathy Hageman	City of Wichita
5	Ray Schen	CITIZEN.
6	Tim Hoyt	SRS
7	Maury Wilson	Citizen
8	Anna Koci	SRS
9	Lisa Unruh	DOB
10	Jennifer Law	Let's Help Topeka
11	Courtney Clark	Let's Help Topeka
12	Kym Belish	Let's Help Topeka
13	Dan Canoll	Dir. of Arch. Svc.
14	DEAN F. FERRELL	FERRELL CONST.
15	Bill Curtis	Ks Assoc of School Bds
16	Linda Ramirez (Clanton)	KDH
17	W.C. COHEN, JR	Ins Mgm Asso, Inc
18	DAVID R. FRITCHEN	KANSAS STATE UNIV.
19	Larry E. Farrar	Utility Contractors Inc.
20	Bob Totten	Ks Contractor Association
21	Chris McKinnis	League of Ks. Municipalities
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Thu, Mar 3, 1994



TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE  
HOUSE BILL 3022.

Thomas E Slattery, Executive Vice President  
Associated General Contractors of Kansas

House Bill 3022 has the strong support of both the Kansas Contractors Association and Associated General Contractors of Kansas. These two trade associations combined represent around 600 firms in the construction industry and the vast majority of highway, bridge, asphalt paving, municipal utility, and building contractors in the state of Kansas.

The scope of this bill covers all public works projects. It applies to non judgmental errors only. Most often this would be a mistake in mathematics or data input.

The bill would allow a contractor to notify the awarding authority within 48 hours of the bid that a mistake had been made. The awarding authority would then permit the bidder to withdraw his or her bid without penalty if:

- a. A mistake is evident on the face of the bid; or
- b. The bidder establishes by clear and convincing evidence that a mistake was made.

**Associated General Contractors of Kansas, Inc.**

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(913) 266-4015  
FAX: (913) 266-2561

ATTACHMENT 1



Although in many cases this practice is followed as a matter of common sense, it is not specifically provided for by Kansas law. The bill does not provide for any correction and resubmittal of bids after the bid opening, only withdrawal. We believe passage of this bill will be in the best interest of the tax payers, public entities and members of the construction industry.

Thank you for your consideration.

**STATEMENT TO THE APPROPRIATIONS COMMITTEE  
CONCERNING HOUSE BILL 3022**

Mr. or Madam Chairman:

As a member of the group representing the public work construction industry, I appreciate the opportunity to speak to you today concerning the merits of House Bill 3022 which would provide relief from unilateral clerical bid mistakes.

My name is Larry Farrar. I am a Vice President for Utility Contractors, Inc. in Wichita, KS. Utility employs approximately 175 people and has been in business for 43 years. We engage primarily in public works projects for municipal, state, and some federal contracting authorities. In the process of acquiring work, we bid approximately 190 projects per year. This is not uncommon in our industry. Very seldom do we encounter problems with errors in the bidding process. However, when a problem does occur and a mistake is made, current state law penalizes the contractor and unjustly enriches the contracting authority. When a mistake is made, the contractor currently has two options:

- 1) Perform the work for the amount of the bid.
- 2) Forfeit the required bid security which customarily is 5% of the amount bid.

Neither option is very attractive.

The first option certainly is not attractive to the contractor because he/she enters into a contract knowing that a substantial mistake has been made. (It is not uncommon for these mistakes to be hundreds of thousands of dollars.) This option is truly not in the best interest of the public and should not be attractive to the awarding authority. Studies report increased fiscal concerns by both the contractor and public owner, when bids appear to be marred with a mistake. The Construction Industry Institute formed a task force in 1989 that studied changes in projects related to costs and schedules. Their findings showed that projects with "High money left on the table", the same as would occur in a bid error, had cost growth of 8.2% more than projects with "Low money left on the table". The study also showed schedule growth was increased by 13% for projects with "HMLLOT".

Another way to attempt to make up the shortfall is for the contractor to become litigious in action and file numerous claims for work changes. This can be an expensive process for the owner because it normally involves great deals of time, energy, and legal fees.

ATTACHMENT 2

The second option of the contractor forfeiting a 5% bid security may not seem significant until you consider that 5% on a \$2MM public works project is \$100M. In today's marketplace this is a significant punitive penalty to absorb because a clerical error has been made.

As an industry, we are not asking for something that is untried. At this time, only Kansas, Oklahoma, and Pennsylvania do not allow for relief from bid mistakes that can be proven to be of clerical origin. Forty seven states and the federal government already conduct bid procurement with the opportunity for relief from bidding mistakes. We are not asking for Kansas to jump into untested waters. We are requesting that the public works construction industry be afforded the opportunity to seek relief, through the courts if necessary, to prove that a clerical bid mistake has occurred in the bid process and prevent a governmental contracting authority from taking advantage of an overbearing position in order to enhance their financial situation.

The projects that had high MLOT also experienced significant schedule growth. Figure 4-13 shows a 19% increase in projects with high MLOT compared to only 6% increase in schedule for low MLOT projects.

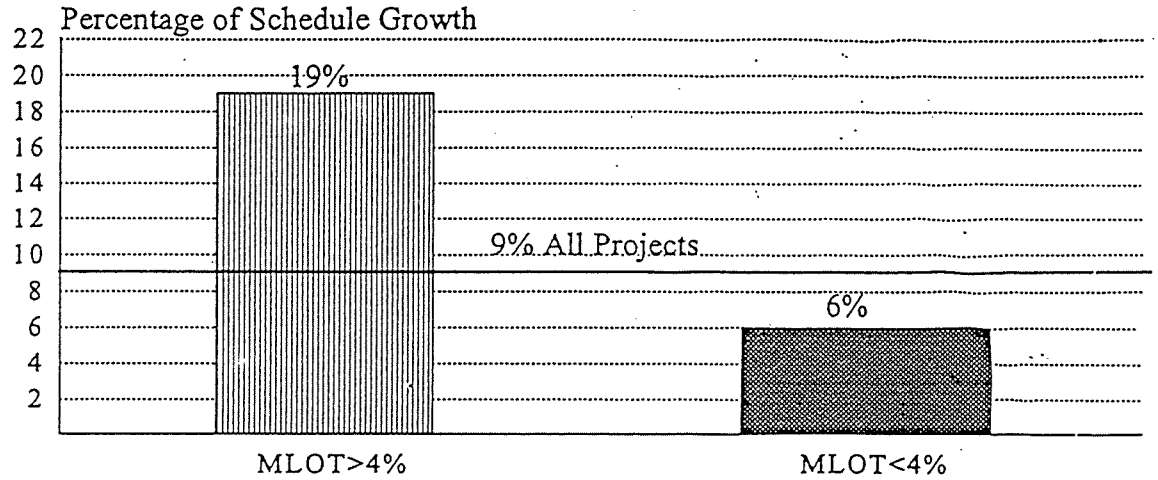


Figure 4-13. Schedule Growth Trends for Projects with High and Low MLOT

### Money Left On the Table versus Cost and Schedule Growth

"Money Left On the Table" (MLOT) is the difference between the low bid and the next higher bid. The term MLOT only applies to fixed price projects and was obtained only from the owners who responded to the research questionnaire. Contractors do not have access to this information, except in the case of a public bid opening.

The "Percentage of MLOT" is the ratio of the difference between original low bid and the next higher bid to the original low bid. The median value of MLOT percentage for the fixed price projects in this study was 4.0%. Thus, for this research report, "high MLOT" is defined as greater than 4.0% and "low MLOT" is defined as less than 4.0%.

Cost and schedule data which were collected in this study indicate that high MLOT is a common factor for projects which experienced high cost growth and high schedule growth. The cost growth trend curves in Figure 4-12 show that the cost growth at the end of the fourth quarter for projects with high MLOT is 12.1% or about 3 times that value for projects with low MLOT (3.9%). This figure shows that cost growth may be higher for projects that have high MLOT. High MLOT may be a result of several factors. Examples are missing an item in the estimate, poorly developed contract documents, or misinterpretation of the work that must be performed.

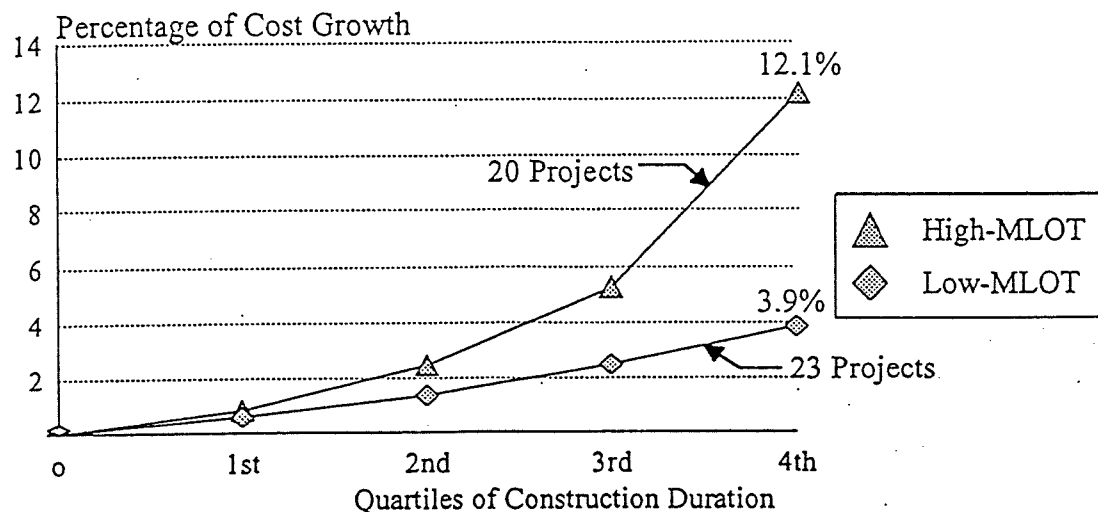


Figure 4-12. Cost Growth Trend Curves for Projects with High and Low MLOT



# FERRELL

## CONSTRUCTION OF TOPEKA, INC.

Testimony Presented to the  
HOUSE APPROPRIATIONS COMMITTEE  
March 3, 1994

By  
Mr. Dean F. Ferrell

Madam Chairman and Members of the Committee

My name is Dean Ferrell, and I thank you for the opportunity to appear before you today. I am President and Owner of Ferrell Construction of Topeka, Inc. and am a past president of the Associated General Contractors of Kansas. My company specializes in commercial building construction and at the present time our work load includes two projects with the State of Kansas and two with local school districts, all publicly funded.

I am here today to encourage your approval of House Bill No. 3022 because it is legislation that is needed now. Forcing contractors to honor bids that include bonafide, substantial errors is taking its toll on our industry.

As the years have passed, so have the profit margins. Because of the market, contractors today are having to bid projects, utilizing unit pricing that seemed too low five years ago. Temper the tight pricing with the low markup that it takes to be the low bidder, and you have a bid with no room for error.

You may be thinking - "Why should we feel sorry for the contractors? Why don't they do a better job of preparing their bids?" Most contractors work feverishly to cut down the chance for error and in most cases succeed. However, even with checks and balances, no one is perfect. My company, in its eighteen years of existence, has been fortunate in that it has asked only twice to withdraw its bid because of a bid mistake. We were also fortunate to be dealing with agencies who allowed bid withdrawal - because in both instances it would have been financially devastating.

The competitive bid process breeds mistakes. Bid days are extremely hectic and, in many cases, chaotic. For a 2:00 p.m. bid letting, we're still receiving sub-bids right up until bid time. All sub-bids must be analyzed, tabulated, and inserted into our estimate, with very little time to check or double check - or we'll miss the 2:00 deadline.



Testimony by  
Dean F. Ferrell

March 3, 1994  
Page 2

The types of mistakes that cause us the most problems are not judgmental. They're simply called "busts". Mistakes like punching the wrong key on a calculator or computer - you know the saying "Garbage In - Garbage Out". Mistakes like mental transpositions of numbers - like thinking \$2,520,000, but writing down \$2,250,000.

Another example would be failing to fill a blank in the estimate. Say there is a line item for paving actually worth \$400,000, but the contractor fails to "plug" the number. These types of mistakes are easy to make when you're under the extreme pressure of bid day time restraint. And they're a contractor's worst nightmare.

In the past few years I have witnessed public agencies force contractors to take a contract, even though they knew the contractor had serious problems with their bid. There appears to be a growing lack of compassion by public boards when it come to bid mistakes, and that's unfortunate.

What intrigues me most is that public agencies, until bids are received, have no real idea of what their project will cost - it's what the market will bear. If no mistakes are made, they will pay what the project is actually worth. If a mistake is made, they will pay less than it is actually worth. Why should they and the taxpayers receive a "windfall" at the unfortunate contractor's expense?

A contractor forced to honor a "busted" bid will react accordingly. More than likely, he'll attempt to "poor boy" the project...meaning he'll underman it and be extremely frugal in the use of equipment. This could lead to potential delays and a reduction of quality - just good enough to get by. Also the funding agency can expect an inordinate amount of claims and change order requests. The project will have potential to be in constant conflict. So who wins? Nobody, really.

In my opinion HB3022 is right for our industry and it is right for the taxpayer. The Kansas legislature has an opportunity now to help preserve the quality standards of public funded projects, while at the same time ensure integrity in the competitive bid process.

I strongly urge you to approve HB 3022.

## STATEMENT TO THE APPROPRIATIONS COMMITTEE CONCERNING HOUSE BILL 3022

Madam Chairman:

I appreciate the opportunity to speak to you today concerning House Bill 3022 which would provide construction contractors relief from unilateral mistakes in bid.

My name is David Fritchen. I am an assistant professor at Kansas State University, Department of Architectural Engineering/Construction Science. I teach Construction Management and Contracting courses to prepare our students for careers in the construction industry. The Department of Architectural Engineering/Construction Science has forged a cooperative link with the construction industry through education and service and it is my pleasure today to serve this group representing our mutual interests in the Kansas construction industry. Prior to accepting this position at Kansas State, I spent over 20 years in the Navy Civil Engineer Corps as a Director of Construction and Construction Contract Manager, where the Federal Acquisition Regulations governed contracting activities. So it is with that background that I support this bill, as it follows very closely the guidelines established for Federal contracting, and it provides the necessary measure of relief for the bidder that has acted in good faith, and the mistake in bid has not come about as a result of the violation of a positive legal duty or from gross negligence.

All Federal and State contracting authorities (*with the exception of Kansas, Oklahoma, and Pennsylvania*) consider mistakes in bid as grounds for nullifying a bid since there is no meeting of the minds. The general rule is that **mistakes of fact** are grounds for relieving the bidder of any further obligations while **mistakes in judgement** provide no basis for relief. Courts have developed some rules under which a bidder may be allowed to withdraw his proposal without penalty or forfeiture if it contains clerical errors. The standard of proof required in all Mistakes in Bid cases is "clear and convincing evidence" must be presented.

The bidder must provide<sup>e</sup> prompt notification and establish:

- a. That a mistake was made
- b. The nature of the mistake
- c. How it occurred, and
- d. The bid price actually intended.

In Federal and State contracting, the vast majority of public contracting officials call attention to an apparent or suspected bid mistake during the bid evaluation process and provide the low bidder notice of a suspected bid mistake and request a bid confirmation. In the event an error is discovered by the bidder, the bidder may request withdrawal of bid, and provide a detailed written statement indicating the nature and cause of the error claimed, together with the original estimate worksheets clearly marked in red indicating the error. Such information is evaluated by the contracting official. If the error is one of fact, (as opposed to error in judgement), ~~than~~ permission may be granted to allow the bidder to withdraw his bid without forfeiture of Bid Bond. However, the bidder must certify that he will not participate in the work through subcontract.

The current practice of requiring forfeiture of Bid Bond for all bid errors has an adverse impact on the contractor as well as the construction project. By forcing the contractor to sign the contract or forfeit the Bid Bond, the State of Kansas is creating a situation which:

- \* Has an adverse economic impact on the contractor, affecting future business activity
- \* Adversely affects the contractors standing with Surety companies
- \* Increases the potential for claims and litigation to make up for the loss
- \* Increases the potential for low quality construction to mitigate the loss
- \* Discourages reputable bidders from bidding public projects
- \* Sets up a "Win - Loose" contract environment, instead of a "Win - Win" environment

I view House Bill 3022 as being mutually beneficial to the State, and the construction industry in general. It provides the same relief for mistakes in bid as is provided by the Federal Acquisition Regulations and the vast majority of other states.

TESTIMONY BEFORE THE HOUSE APPROPRIATIONS COMMITTEE  
HOUSE BILL 3022

W. C. Cohen, Jr. CEO  
Insurance Management Associates, Inc.

Insurance Management Associates, Inc. is the largest surety agent in the state of Kansas.

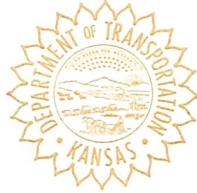
Should a public body take unfair advantage of an honest mistake made by a contractor in the state of Kansas? Which in effect would cause a contractor to participate in the cost of the project because of their honest mistake.

I believe it is important for you to understand that while the surety has issued a bid bond this type of situation seldom cost the surety any money.

Unlike insurance companies the surety collects from its customers all direct cost unless the contractor is insolvent.

It only stands to reason in my way of thinking that public bodies should not benefit from honest mistakes. It would not be good public policy to benefit from mistakes of an honest nature made by others and I recommend House Bill 3022 be passed





Michael L. Johnston  
*Secretary of Transportation*

KANSAS DEPARTMENT OF TRANSPORTATION

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Topeka 66612-1568  
(913) 296-3566  
FAX - (913) 296-1095*

Joan Finney  
*Governor of Kansas*

**TESTIMONY BEFORE  
HOUSE APPROPRIATIONS COMMITTEE  
March 3, 1994**

**REGARDING HOUSE BILL 3022**

Mr. Chairman and Committee Members:

House Bill 3022 allows for recognition and correction of mistakes made by bidders competing for contracts with agencies of the State of Kansas. The bill calls for review of each bid, by the state agency requesting the bid, and notification, to the bidder, of nonjudgmental, i.e. preparation or calculation, errors that may exist. The bill further allows the bidder to withdraw the bid, without penalty, for these nonjudgmental errors and those errors "that the courts have determined under the common law to be an excusable bidding error".

The Department of Transportation opposes the passage of this legislation for several reasons. Adoption of this Legislation would give bidders, after opening, an opportunity to manipulate their proposals. It would substantially increase the effort required by KDOT to let construction and maintenance projects. In addition, it will also delay the award of these projects. Finally, it will shift the liability for mistakes in the bid upon KDOT.

Our primary concern is that this bill would allow bidders to manipulate their bids after they are opened. A bidder, under the stipulations of H.B. 3022, could accidentally or purposely make a mistake in his or her proposal and, after letting, if the bid appears considerably low, withdraw it at no penalty. For example, a bidder may submit the lowest bid but, the second lowest bid may be ten percent higher. The low bidder would now be allowed to claim a mistake in his or her bid, withdraw it, and not forfeit the bid bond. The second lowest bidder would then get the contract and KDOT pays the additional cost. This provision encourages a bidder to spend less time on bid preparation and review prior to submittal.

The provisions of H.B. 3022 would substantially increase the level of effort expended by KDOT to perform the more intense review of a bid for math and content errors. Additional legal research will also be called for to determine how the courts will define

an excusable bidding error. Given the large number of projects let by KDOT the effect of these burdens could necessitate hiring additional personnel. Internal estimates for the total cost of this personnel range from \$45,145 to \$96,632 per year, depending upon actual workload increases. These costs would be subject to normal cost of living and merit increases.

The additional steps required for the bid process by this bill would cause substantial delays in projects being awarded. The time required for reviews will increase, as mentioned above, due to the extent of additional scrutiny required. More time will be involved, when errors are detected, to notify the bidder and allow for his response.

A final, and potentially most costly, impact of this legislation is the burden of liability thrust upon the state agency to inform the bidder of a mistake. It would no longer be the bidder's responsibility to take the consequences for his or her actions. If a state agency should fail to notify a bidder of his or her mistake, H.B. 3022 creates the grounds for a civil lawsuit.

In closing, it should also be noted that this legislation is not necessary for KDOT. Current statutes, K.S.A. 68-407 through 68-410, allow the Secretary of Transportation to administer bids in the fashion called for by H.B. 3022. However, because KDOT believes it is the responsibility of every business to ensure that its bids are correct, the Department has established bid practices that place the responsibility on the bidder.



**League  
of Kansas  
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

**TO::** **HOUSE APPROPRIATIONS COMMITTEE**

**FROM:** Chris McKenzie, Executive Director

**RE:** HB 3022

**DATE:** March 3, 1994

Thank you for the opportunity to appear today to comment on HB 3022 and express our opposition to what appear to be requirements that could damage the public interest. As a former local government administrator, I attended many bid openings at the conclusion of which I often heard the low bidder comment on how much money they "left on the table". The amount "left on the table" was the difference between the low bidder's bid and the amount of the next lowest bid. In other words, the spread between the two was going to the public in the form of savings rather than to the low bidder in the form of profit.

HB 3022 would appear to significantly shift the burden for bidding mistakes from the actual bidders to the public in this way. **First**, it imposes a duty on public agencies to request bidder verification of a "nonjudgmental mistake" (whatever that is), or a bidder will have the right to withdraw a low bid for the reasons stated in Section 5. **Second**, it could prevent public agencies, including cities, from enforcing all contracts for construction of roads, streets, bridges, etc. in which the city has failed to detect a mistake and allowed a bidder to verify that the bid is accurate.

Kansas has a long tradition of protecting the fiscal integrity its local units of government. The cash basis and budget laws impose important procedures for the handling of public funds, and K.S.A. 10-119 provides that contracts in violation of the cash basis law shall be void. This protects the public from the misappropriation of funds for other than their original purpose.

HB 3022 would put in place a purchasing process for construction services that invites bidders to include mistakes in their bids in the event they find they would rather be released from a low bid and bid on what may be a more lucrative public or private project. Today local officials already have the discretion to release low bidders from their bids if they find there is an obvious error or mistake. This bill does not add any protection for the public and its funds; rather, it raises the clear and present danger of businesses not dealing with governmental units in good faith and costing the public considerably more property taxes and other local revenues to construct important local facilities.

**RECOMMENDATION:** The League respectfully recommends defeat of this legislation. If the Committee determines it is advisable to report the bill favorably, we would request that cities be exempted from this new mandate which restricts local governing bodies in making sound decisions in the public interest.

Thank you.

ATTACHMENT 7





Testimony on H.B. 3022  
before the  
House Appropriations Committee

by

Bill Curtis, Assistant Executive Director  
Kansas Association of School Boards

March 3, 1994

Madam Chair and members of the committee, we appreciate the opportunity to present testimony on behalf of the members of the Kansas Association of School Boards on HB 3022. KASB opposes HB 3022 which deals with mistakes made by bidders on school district construction projects.

Our first objection is in section 3 of the bill which places the burden of determining whether a mistake has been made upon the awarding authority.

The second objection is with section 5 of the bill which permits a bidder to withdraw a bid even if the public body does not find a mistake and request verification and the burden is on the public body to apply a "clear and convincing evidence" standard.

The third objection, and the most important, is in section 6 of the bill. It allows an injunction to prohibit enforcement of a bid. This process can tie up a project for an unknown length of time as bids cannot be relet until the issue of the injunction has been settled. Also at issue here is the remedy of the injunction. If the remedy is a

bid correction, as opposed to a withdrawal, can the awarding authority be forced to accept the corrected bid?


Thank you for the opportunity to testify today.



**REPORT OF THE SRS SUBCOMMITTEE ON WELFARE REFORM**

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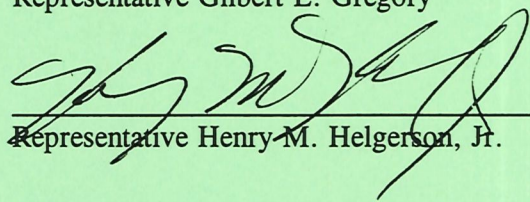
Representative Bob Mead  
Chairperson

  
Representative Barbara P. Allen

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Representative Kent Glasscock

  
Representative Gilbert E. Gregory

  
Representative Henry M. Helgerson, Jr.



**SUBCOMMITTEE REPORT****RECOMMENDATIONS ON WELFARE REFORM**

The following bills were referred to this Subcommittee for consideration: H.B. 2908, H.B. 2909, H.B. 2929, H.B. 2930, H.B. 2938, H.B. 2939, H.B. 2940, and H.B. 2945. The Subcommittee's recommendations on welfare reform follow and are recommended conceptually as amendments to H.B. 2929. The Subcommittee makes no recommendations on any other bills, except those incorporated into H.B. 2929 in the following recommendations.

The following summarizes the Subcommittee's recommendations regarding a welfare reform package. The Subcommittee recommends that House Bill 2929 be amended to incorporate the Subcommittee's recommendations. The following explanation is arranged according to the current sections of H.B. 2929. Where available, information comparing this proposal to that recommended by SRS. Fiscal impacts, where estimated, are also noted.

**Preamble**

The Subcommittee believes the purpose of H.B. 2929 is to empower people to get off welfare and to help them achieve self-sufficiency. If savings do in fact result from passage of this bill, we believe dollars saved should be placed back into programs and/or services for the AFDC population.

***Existing Provisions of H.B. 2929:*****New Section 1.**

**Minors Must Live With Their Parents.** This provision requires minors under the age of 18 who have a child or are pregnant, and have never been married to reside with a parent, legal guardian, or other adult relative, or in an adult-supervised living arrangement as a condition of receiving assistance. Certain exceptions are allowed in accordance with the Family Support Act of 1988 in situations where: there is no living parent or legal guardian or their whereabouts are unknown; the state determines that the physical health or safety of the individual or their child would be jeopardized; or the individual has lived apart from the individual's parent or legal guardian for at least one year prior to the birth of the child or application for benefits.

This provision has no fiscal note.

***The Subcommittee concurs with this provision.***



## **New Section 2.**

**Family Size Limitations.** This section would provide for no additional benefit after two children, for a child conceived while on assistance, unless the parents work. As originally drafted, the bill would allow each wage earner in the family to keep an amount of income equal to what the additional grant would have been. The sponsor proposed an amendment that would double this income disregard in the case of one wage earner families.

This provision is estimated to by SRS to cost \$98,000 in state funds in FY 1995, and to produce savings of \$111,312 in FY 1996. The bill sponsor estimates no savings in FY 1995 and estimated savings of \$192,940 in FY 1995.

*The Subcommittee recommends that this section be deleted from the bill.*

## **New Section 3 and New Section 4.**

**Family Support Tax Credit.** Section 3 of the bill requires that no AFDC be granted by the Secretary of SRS unless the Secretary has certified, after undertaking diligent efforts, that there is no relative capable and willing to assume financial support of the applicant without resort to public assistance. The section requires this certification prior to the initial granting of assistance, and upon annual periodic reviews of eligibility. Section 4 authorizes a credit against a persons' tax liability for persons agreeing to assume some financial support of assistance recipients, with the amount of the credit not to exceed the state matching share of the amount of assistance which would have been paid under the AFDC program.

SRS initially estimated costs of \$863,045 in FY 1995 and \$1,467,523 in FY 1996, but amendments proposed by the sponsor would reduce the cost to \$0, and would allow the family support to be used to match federal funds. The Department of Revenue has no estimated fiscal impact, but states that if 5,000 taxpayers contributed and had their tax liability reduced by \$850 each (the average tax liability in Kansas), then the impact would be \$4,250,000 in lost tax revenue.

*The Subcommittee recommends that section 3(a) of the bill be deleted as recommended by the sponsor, and recommends that other amendments to Section 4 be made that would encourage SRS to establish a 501(c) organization for the purpose of receipt of these donations; such funding could then be used to match federal funds.*

## **New Section 5.**

**School Dropout Penalty.** New Section 5 of the bill would require that financial assistance provided under the AFDC program be reduced by 10% of the family level grant if a dependent child is not attending school to obtain a high school diploma or GED. Flexibility is given to the Secretary to determine whether the child is prohibited from attending school or unable to attend school.



SRS estimates expenditures of \$319,721 from the State General Fund in FY 1995 and \$440,411 in FY 1996, including 49 staff positions. The sponsor estimates minimal savings and no net cost.

*The Subcommittee recommends that the provisions of H.B. 2188, including amendments proposed to the Senate Education Committee (March 1, 1994) be amended into this bill, and that current section 5 be deleted.*

The estimated fiscal note on the Subcommittee recommendation totals \$335,954 from state funds in FY 1995. The fiscal note assumes that child care assistance would be provided from existing funds, as this population is already eligible for this assistance.

#### **New Section 6**

**Child Individual Development Account.** This section of the bill would exclude from eligibility determinations income earned by a minor and saved for educational purposes in an individual development account as discussed in New Section 7.

Both SRS and the sponsor estimate no net fiscal impact on SRS in FY 1995 or FY 1996.

*The Subcommittee recommends that this section be amended to allow exemption for a child or adult's income or resources, up to the limits established in Section 7 for Individual Development Accounts with regard to eligibility for assistance. Income or assets up to these limits which the applicant will place in an individual development account would not affect eligibility or grant determinations.*

#### **New Section 7**

**Individual Development Account.** This section of the bill will allow any resident of the state to deposit contributions in an individual development account, up to \$2,000 for each account holder, and \$1,000 for each dependent child of the account holder. Maximum contributions in subsequent years are to be increased by the national consumer price index. Interest earned on an IDA is to be exempt from state income taxation as adjusted gross income. The account must be established as a trust, and assets may be used solely for the purpose of paying the educational, home ownership or health care expenses of the account holder. Certain penalties are assessed for withdrawal of funds in certain circumstances.

No fiscal note has been received from the Department of Revenue regarding this provision.

*The Subcommittee recommends that this provision be amended to apply only to AFDC recipients. We believe that although the broader provisions may have merit as tax policy, they are not a part of welfare reform.*



## New Section 8

**Elimination of Marriage Penalty.** This section directs SRS to seek a waiver to allow certain two-parent families not meeting AFDC eligibility work requirements, pregnant women otherwise eligible for AFDC who are in their first trimester of pregnancy, and certain foster care children to qualify for AFDC. The net effect of this section is to shift persons currently funded entirely from the state general assistance program to the AFDC program, thus receiving federal match for 59 percent of grant expenditures.

SRS and the sponsor estimate FY 1995 savings of approximately \$2.2 million, and FY 1996 savings of approximately \$2.8 million in state funds.

*The Subcommittee concurs.*

## New Section 9

**Electronic Benefit Funds Transfer.** This section of the bill requires that on and after January 1, 1995, all monetary payments made to public assistance recipients in KanWork counties selected by the Secretary shall be made through an electronic funds transfer remittance plan. The bill further requires the Secretary to submit a report describing how the electronic funds transfer plan was implemented, the results during the pilot phase, any cost savings, and any future recommendations, to be submitted by December 31, 1995.

SRS and the sponsor estimate no fiscal impact from this provision.

*The Subcommittee recommends this section be amended to require the Secretary to conduct an electronic benefit transfer pilot project including cash assistance, food stamps and medical benefits beginning in May, 1995, and requires statewide expansion beginning in August, 1995. This is the timeframe proposed by the agency for statewide implementation.*

## Section 10(c)

**Requirement of Paternity Identification.** This section requires that any unmarried applicant for AFDC identify by name, and, if known, by current address the father of the dependent child, subject to exceptions in rules and regulations adopted by the Secretary.

SRS and the sponsor estimate state funds savings of approximately \$60,000 in both FY 1995 and FY 1996.

*The Subcommittee concurs.*

## Section 10(i)

**Voluntary Job Quit.** This section states that no person who voluntary quits employment or who is fired from employment due to gross misconduct as defined by rules and regulations adopted by the Secretary, is eligible to receive public assistance benefits. This



section would reduce the family grant by the individual's portion of the grant. The SRS proposal, in *Actively Creating Tomorrow*, would penalize the entire family for a three-month period.

SRS estimates this provision of the bill would result in state funds savings of \$54,112 in FY 1995 and \$112,553 in FY 1996. The sponsor's estimates exceed these estimates by approximately \$2,000 in FY 1995 and \$4,000 in FY 1996. The SRS proposal would provide an estimated savings of \$224,874 in FY 1995 and \$464,635 in FY 1996.

*The Subcommittee recommends that the provisions of H.B. 2938 regarding family investment agreements be incorporated into this bill. We further recommend that the specific provision relating to voluntary job quit be deleted, but that the incorporated provisions of H.B. 2938 specifically reflect the Subcommittee's intent that voluntary job quit provisions be incorporated into the provisions of family investment agreements. This would be an expansion of current language in H.B. 2938 which authorizes the Secretary to assess penalties and establish corrective action for noncompliance. The Subcommittee further recommends that the provisions of H.B. 2938 be amended to clarify that the intention is not to change mandated KanWork participation to those with children under the age of 3.*

SRS estimates a fiscal note of \$751,090 in state funds in FY 1995 and \$1,181,074 in state funds in FY 1996.

#### Section 10(i)

**Fugitives Ineligible.** This section would render fugitives from justice by reason of a felony conviction or charge ineligible to receive public assistance benefits from the state.

SRS and the sponsor both estimate a negligible fiscal impact.

*The Subcommittee concurs.*

#### Section 11 and 12

**KanWork Changes.** This section of the bill limits KanWork services to those recipients deemed to be "employable" as determined by the Secretary. Further, the bill would restrict participation in a KanWork program for high school graduates to one year. Those who have not graduated, but deemed by the Secretary as able to attain a GED within nine months after becoming a KanWork participant may participate in the educational program under the KanWork act, but the program shall be limited to one year after attainment of the GED. The section also would authorize work experience through employment with state or local government units in work which otherwise would have gone undone, if the participant is unable to be placed in other employment. Also, remedial education and college and community college education would be limited to persons "deemed able to become substantially more employable" from this educational experience to receive it. Finally, Section 10 would limit KanWork participation on the part of the "employable" to two years. After participation ceases in the KanWork program, the recipient is not eligible to receive any public assistance for three subsequent years, except that participants who



fail to become employed while participating in the KanWork program are authorized to receive transitional services.

SRS and the sponsor estimate state funds savings of \$136,975 in FY 1995 and \$287,758 in FY 1996.

*The Subcommittee recommends a 30-month limit for education and training under the KanWork program for "employable" recipients. Of that 30 months, no more than nine months are to be for attainment of a GED. The Subcommittee concurs with the three-year restriction for return to public assistance.*

**Other New Sections to be Added to H.B. 2929:**

*The Subcommittee recommends that the following additional items be incorporated into the provisions of H.B. 2929. We would note that SRS and the sponsor of H.B. 2929 have agreed with these amendments and the sponsor of H.B. 2929 is recommending their inclusion as amendments.*

*1. Teen Pregnancy. The Subcommittee recommends the addition of \$420,000 from the State General Fund for an appropriation to the Kansas Department of Health and Environment for teen pregnancy prevention activities. The Subcommittee further recommends that the Department give a high-priority to AFDC recipients, and maximize federal matching funds which would be available for this population. The Subcommittee also intends to review the current allocation of teen pregnancy funding when it reviews the budget of the Kansas Department of Health and Environment, with a view toward shifting resources to maintain the current teen pregnancy projects. (Both SRS and the sponsor of H.B. 2929 agree with this provision.)*

*2. Two-Parent Work Registration. The Subcommittee recommends that the bill be amended to require work registration by both parents in remote areas of the state. At the current time, both parents must register with an exception for unemployed parent cases in remote areas.*

The fiscal note for this provision estimates savings of \$28,391 in state funds in FY 1995 and \$58,661 in state funds in FY 1996.

*3. Late Reporting Penalties. The Subcommittee recommends the addition of a provision to authorize the Secretary to establish penalties for late monthly reporting by recipients. The penalty would be a percentage reduction of benefits applied to all recipients. At the current time, only families with earnings are penalized.*

The fiscal note for this provision estimates savings of \$246,445 in state funds in FY 1995 and \$509,205 in state funds in FY 1996.



**4. Paternity Outreach Program.** *The Subcommittee recommends addition of a provision authorizing the Secretary to provide grants to hospitals for paternity establishment at the time of the birth of a child.*

The fiscal impact for this provision estimates costs of \$213,190 in state funds in both FY 1995 and FY 1996.

**5. Employment Security Cross Match.** *The Subcommittee recommends addition of provisions to improve the agency's ability to crossmatch employment and to make information on new-hires more available.*

SRS estimates state funds savings of \$105,866 in both FY 1995 and FY 1996.

**6. Earned Income Disregard.** *The Subcommittee recommends that the provisions of H.B. 2939 be incorporated into this bill. However, the Subcommittee recommends that the language in Section 1(a)(3) relating to the long-term unemployed, be stricken. The effect of the Subcommittee's recommendation is to adopt the agency's proposal for an increase in the earnings disregard. The sponsor of H.B. 2929 agrees with this provision.*

SRS estimates state funds savings of \$138,726 in FY 1995 and \$785,520 in FY 1996.

**7. System Automation.** *The Subcommittee recommends certain systems enhancements which SRS believes are necessary to carry out these provisions and update their current system. The sponsor agrees with this item.*

SRS estimates a state cost in FY 1995 of \$359,699 and in FY 1996 of \$319,828.



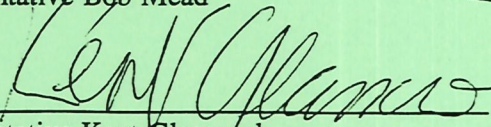
## ESTIMATED STATE FUNDS IMPACT OF SUBCOMMITTEE RECOMMENDATION

	FY 1995	FY 1996
Minors Must Live with Parents	--	--
Family Support Tax Credit	?	?
School Dropout (KanLearn - HB 2188)	335,954	311,225
Child & Adult IDA/Resource Exemption	29,274	29,274
Eliminate Marriage Penalty	(2,234,255)	(2,823,255)
Electronic Benefit Transfer	--	--
Requirement of Paternity	(57,039)	(58,927)
Family Investment Agreements	751,090	1,181,074
Factor Out Job Quit Savings Amended In	(54,112)	(112,553)
Fugitives Ineligible	--	--
KanWork Modifications	--	--
Teen Pregnancy Program	420,000	420,000
2 Parent Work Register	(28,391)	(58,661)
Paternity Outreach	213,190	213,190
Cross-Match with Employers	(105,866)	(105,866)
Earned Income Disregard	(138,726)	(785,520)
System Automation	359,699	319,828
Total	(\$509,182)	(\$1,470,191)



## MINORITY REPORT

We are not in agreement with the general direction taken in the majority report. Although the proponents of House Bill No. 2929 and the secretary of the Department of Social and Rehabilitation Services reached agreement on major provisions of a reform proposal, the majority report in essence discounts those agreements and embarks upon a new course. Although we respect the opinions expressed in the majority report, we respectfully disagree with the conclusions which they have reached. We also continue to have concerns over the absence of clearly defined goals or measurable outcomes, and remain uncertain about future ramifications.

  
\_\_\_\_\_  
Representative Bob Mead  
\_\_\_\_\_  
Representative Kent Glasscock

HOUSE BILL No. 2188

By Representatives Allen, Goossen, Helgersen and Wagnon

2-2

DRAFT OF AMENDMENTS TO HB 2188

(3-1-94 )

ATTACHMENT 10

9 AN ACT establishing the KanLearn program; providing for admin-  
10 istration thereof by the secretary of social and rehabilitation serv-  
11 ices; establishing eligibility standards for participation in such  
12 program and providing for certain payments and assistance there-  
13 under; authorizing the adoption of rules and regulations relating  
14 thereto.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. (a) ~~This act shall be known and may be cited as the~~  
18 KanLearn act.

19 (b) An individual who is a recipient of cash assistance ~~known as~~  
20 ~~aid to dependent children~~ under subsection (b) of K.S.A. 39-709  
21 and amendments thereto may participate in the KanLearn program  
22 under this act if all of the following apply:

23 (1) The individual ~~is 13 to 19 years of age;~~

24 (2) the individual has not graduated from a high school or ob-  
25 tained a declaration of equivalency of high school graduation;

26 (3) the individual is not exempted from attending school under  
27 state law;

28 (4) the individual is a ~~parent or~~ is residing with such individual's  
29 natural or adoptive parent, foster parent or legal guardian;

30 (5) if the individual is the caretaker of a child, the child is at  
31 least 90 days old;

32 (6) if child care services are necessary in order for the individual  
33 to attend school, licensed or registered child care services under the  
34 provisions of article 5 of chapter 65 of the Kansas Statutes Annotated  
35 and amendments thereto are available for the child and transportation  
36 to and from child care is also available;

37 (7) the individual is not prohibited from attending school while  
38 a suspension or an expulsion under K.S.A. 72-8901 *et seq.* and  
39 amendments thereto is pending;

40 (8) if the individual was expelled from a school under K.S.A. 72-  
41 8901 *et seq.* and amendments thereto, there is another school avail-  
42 able which the individual can attend; ~~and~~

43 (9) if the individual is 16 to 19 years of age, the school district

(1)

(2) The purpose of the KanLearn program shall be to encourage eligi  
individuals to participate and to complete school and attain a high school  
diploma or the equivalent of a high school diploma.

has attained age 13 and has not attained age 20

person who is a natural or adoptive parent or is pregnant or is a person who

ATT 10

1 does not determine that the individual will fail to graduate from  
 2 ~~(2) high school before reaching age 20.~~

3 (c) (1) An individual who fails to meet the requirements under  
 4 subsection (b) shall not be eligible to participate in the KanLearn  
 5 program established under this act.

6 (2) Within the limits of appropriations therefor and subject to  
 7 guidelines established by the secretary of social and rehabilitation  
 8 services by rules and regulations: (A) The secretary in cooperation  
 9 with the school district may provide mentoring and tutoring services  
 10 and transportation to and from school to individuals who are par-  
 11 ticipants in the KanLearn program when it is determined that such  
 12 services are necessary for the individual to attend high school with  
 13 a reasonable expectation of graduation, and (B) the secretary may  
 14 provide one or more special financial assistance payments to an  
 15 individual who is a participant in the KanLearn program when it is  
 16 determined that such payments are necessary to make it possible  
 17 for the individual to continue attending school when specific needs  
 18 or circumstances of the individual would otherwise cause the indi-  
 19 vidual to discontinue attending school on a temporary or permanent  
 20 basis.

21 (3) Within the limits of appropriations therefor, ~~upon completion~~  
 22 ~~of two semesters, or the equivalent, each year of school and en-~~  
 23 ~~rollment to attend the ensuing semester of school,~~ an individual who  
 24 is a participant in the KanLearn program ~~shall be eligible to receive~~  
 25 an incentive payment in an amount fixed by rules and regulations  
 26 ~~of not less than \$100, except that an individual shall not be eligible~~  
 27 ~~to receive the incentive payment under this subsection (c)(3) if that~~  
 28 ~~individual is eligible to receive the additional incentive payment~~  
 29 ~~under subsection (c)(4).~~

30 (4) ~~Within the limits of appropriations therefor, upon graduation~~  
 31 ~~from high school and receipt of a high school diploma, an individual~~  
 32 ~~who is a participant in the KanLearn program shall be eligible to~~  
 33 ~~receive an additional incentive payment in an amount fixed by the~~  
 34 ~~secretary of social and rehabilitation services by rules and regulations~~  
 35 ~~of not less than \$250.~~

36 (5) An individual who is a participant in the KanLearn program  
 37 shall be exempt from work projects, community work and training  
 38 programs, job requirements under the KanWork program and other  
 39 work requirements for eligibility for receipt of public assistance. The  
 40 secretary shall provide for periodic monitoring and evaluation of the  
 41 progress in school of an individual who is a participant in the  
 42 KanLearn program.

43 (d) In accordance with the provisions of this section, the secretary

; and  
 agreement.

(10) If the individual enters into a written KanLearn participati

or to attend another educational program associated with the school district  
 that is designed to lead to attainment of a high school diploma or the  
 equivalent of a high school diploma

and not more often than monthly

and who is attending school in accordance with Kanlearn program requireme  
 and is satisfying the academic progress requirements of the KanLearn progr

adopted by the secretary of social and rehabilitation services

If an individual participating in the KanLearn program does not attend scho  
 accordance with KanLearn program requirements without good cause or doe  
 not satisfy the academic progress requirements of the KanLearn program  
 without good cause, the individual may be subject to monetary penalties u  
 shall reduce the cash assistance under subsection (b) of K.S.A. 39-709, and  
 amendments thereto, and other penalties terminating other special financi  
 assistance payments or child care services provided under the KanLearn pro  
 , except that the monetary penalties shall not exceed the amount of the  
 incentive payment. All such penalties shall be defined by and shall be impo  
 in accordance with rules and regulations adopted by the secretary of social  
 rehabilitation services.



1 of social and rehabilitation services shall adopt rules and regulations  
 2 which establish KanLearn program requirements ~~as a condition to~~  
 3 ~~participation therein~~ and which fix incentive payment amounts for  
 4 the KanLearn program. ~~The rules and regulations shall specify how~~  
 5 ~~the department of social and rehabilitation services determines that~~  
 6 ~~a KanLearn participant has attended school for the requisite periods~~  
 7 ~~to be eligible for incentive payments.~~

8 (e) Within the limits of appropriations therefor, if the KanLearn  
 9 participant demonstrates the need to purchase child care services in  
 10 order to attend school and these services are available, child care  
 11 services shall be provided to each such participant in the KanLearn  
 12 program through reimbursement of private child care providers or  
 13 through state child care centers. Reimbursement to private child  
 14 care providers shall not exceed the fee charged to private clients for  
 15 the same service and may be lower than such fee if the private child  
 16 care provider agrees to charge a lower fee.

17 (f) If the secretary of social and rehabilitation services obtains the  
 18 ~~waivers to federal program requirements under subsection (h), the~~  
 19 ~~secretary shall implement the KanLearn program beginning with the~~  
 20 ~~fall 1993 school term of the fall school term after such waivers have~~  
 21 ~~been obtained.~~

22 (g) ~~During the fiscal year ending June 30, 1994, the provisions~~  
 23 ~~of this act shall be implemented as a pilot program in three counties~~  
 24 ~~or areas of this state which are also counties or areas of this state~~  
 25 ~~in which the program established under the KanWork act has been~~  
 26 ~~implemented. The secretary of social and rehabilitation services shall~~  
 27 ~~designate the counties or areas of this state in which the KanLearn~~  
 28 ~~pilot programs will be implemented. After June 30, 1994, the~~  
 29 ~~KanLearn program may be implemented in additional counties or~~  
 30 ~~areas of this state only upon specific authorization of such expansion~~  
 31 ~~by appropriation or other act of the legislature.~~

(i) 32 ~~(h)~~ The secretary of social and rehabilitation services shall seek  
 33 ~~waivers from program requirements of the federal government as~~  
 34 ~~may be needed to carry out the provisions of the KanLearn act and~~  
 35 ~~to maximize federal matching and other funds with respect to the~~  
 36 ~~KanLearn program established under such act. The secretary of social~~  
 37 ~~and rehabilitation services shall implement the KanLearn program~~  
 38 ~~under this act only if such waivers to federal program requirements~~  
 39 ~~have been obtained from the federal government.~~

(j) 40 ~~(i)~~ The provisions of this section shall expire on July 1, ~~1996~~  
 41 Sec. 2. This act shall take effect and be in force from and after  
 42 its publication in the statute book.

and penalty amounts

The rules and regulations shall define "good cause", "school" and "the equivalent of a high school diploma" for the purposes of the KanLearn program and shall specify the provisions of KanLearn participation agreements, which shall include provisions that:

(1) The individual participating in the KanLearn program shall attend school in accordance with KanLearn program requirements and shall satisfy the academic progress requirements of the KanLearn program;

(2) the secretary of social and rehabilitation services shall provide the incentive payment to the individual if the individual attends school in accordance with KanLearn program requirements and satisfies the academic progress requirements of the KanLearn program; and

(3) the secretary may impose a monetary penalty to reduce the cash assistance under subsection (b) of K.S.A. 39-709, and amendments thereto, and other penalties terminating other special financial assistance payments or child care services provided under the KanLearn program, if the individual participating in the KanLearn program does not attend school in accordance with KanLearn program requirements or does not satisfy the academic progress requirements of the KanLearn program

(i)

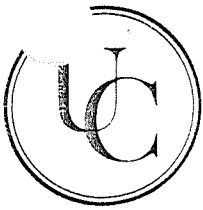
commencing

Initially

After the fiscal year in which the pilot program commences

(h) The secretary of social and rehabilitation services shall provide for one or more independent evaluations of the KanLearn program, including the pilot program, utilizing control groups. The secretary shall report on such evaluations and the activities under the KanLearn program, including the pilot program, during each regular legislative session to the committee on appropriations of the house of representatives, the committee on ways and means of the senate and to other committees of the legislature upon request such committees.

1997



## Utility Contractors, Inc.

(316) 265-9506 - 659 N. Market Street - P.O. Box 2079 - Wichita, Kansas 67201

An Equal Opportunity Employer

Appropriations Committee  
Topeka, Kansas

March 1, 1994

Re: House Bill 3022

Dear Appropriations Committee Members:

I apologize for not attending the hearing today but I am out of the state. In addition to the testimony presented today, I would like to submit this statement to record in support of HB3022. While some responsible public agencies in Kansas do not enforce the current Kansas case law, others take advantage of an overbearing position. As was discussed in testimony, if the public agency chooses to enforce current Kansas case law, the contractor is left with two negative choices:

- 1) Accept the contract for the project and proceed knowing there was a substantial portion of the costs of the work left out of the bid, or
- 2) Forfeit the bid security which in most cases amounts to 5% of the total bid price.

An example might be helpful to illustrate the need for this legislation. Assume a contractor submitted a bid for a project of \$2,000,000.00. When the bids were opened and read in public, the next higher bid was \$2,250,000.00. This size of discrepancy between the two low bids should indicate that a problem may exist. The low bidder reviews the bid work sheets and computer printouts and discovers that in the final assembly of the numbers someone has inserted \$20,000 where \$200,000 should have been inserted. At this point, the contractor must choose to either "eat" the \$180,000 difference ("mistake") and proceed with the project or forfeit its bid security (\$100,000 in this example) to admit a mistake was made and walk away from the project. Neither of these options are satisfactory in today's economic climate.

The usual argument from the irresponsible owner's perspective is that they have somehow been damaged by not having the project completed for what was the initial low bid price as read. In other words, some public owners believe it is appropriate to take advantage of a financial windfall at the expense of a contractor who is laboring under a mistake in its bid. From the contractor's view point, this perspective is ridiculously unfair. Bidding is an expensive process for the contractor and if he chooses to withdraw his bid due to an error, how can an owner be any more damaged than had they not had access to the faulty bid originally. I can speak of this situation from first hand experience as can numerous other General Contractors and Subcontractors engaged in this industry.

ATTACHMENT 11

For those who would suggest that a change in the law will provide an opportunity for misuse and abuse of the public competitive bid system, I submit several thoughts.

- 1) It is my experience that in any situation involving the human mind, if so inclined, will find a way to attempt to abuse or otherwise cheat the system.
- 2) The changes to be implemented by passage of HB3022 insure that a burden of proof is imposed on the contractor to be judicially enforced if necessary. Because the vast majority of states and the federal government operate under a system of such relief standards and case law in the area are well established.
- 3) It appears that for the vast majority of states and the federal government, the overwhelming conclusion is that relief from bid mistakes works in favor of both the contracting authority and the contractor.
- 4) The Construction Industry Institute strongly supports the position that it is in the best interest of the project and owner that a substantially low bidder be offered the opportunity to withdraw the low bid. (This information is of a very technical nature but can be made available if you desire.)

Thank you for your time in considering this proposed change. We would obviously appreciate your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles F. Grier", written in a cursive style.

Charles F. Grier  
President

CFG:lh