

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. 446

As Amended by House Committee on
Appropriations

Brief*

SB 446 would repeal existing law with regard to signature requirements in state contracts. Under current law, all state contracts subject to approval of the attorney general must be signed by the head of the agency, the Director of Purchases, and the Director of Accounts and Reports. All other state contracts must be signed by the Director of Purchases. The bill would eliminate the requirement to sign paper documents.

The bill, as amended, would create the Council on Efficient Government Act, which would adopt a public policy that the State should not compete with, or duplicate the activities of, private businesses, not-for-profit organizations, or federal or local governmental units. The bill also would create the Council on Efficient Government, charged with reviewing and evaluating the possible outsourcing of governmental functions and operations, and would require directors of State agencies and the Director of the Division of Purchases to create and provide to the Legislature, written explanations when the lowest bidder on a contract is not selected, when a Kansas business is not selected, and when a contract is allowed to be automatically renewed or extended. The Board of Regents and its postsecondary institutions generally would be exempt from the Act.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Council Structure and Membership

The bill would create the Council on Efficient Government as a public instrumentality whose powers under the Act are considered the performance of an essential governmental function. The Council would consist of 11 members appointed in the following manner:

- The Lieutenant Governor, or the chief executive of a state agency, who shall be appointed by the Governor;
- Two members appointed by the Governor, who are not members of the Legislature, but are engaged in private business;
- Three members appointed by the President of the Senate, all of whom are engaged in private business, and one of whom may be a member of the Legislature;
- Three members appointed by the Speaker of the House of Representatives, all of whom are engaged in private business, and one of whom may be a member of the Legislature;
- One member appointed by the Minority Leader of the Senate, who shall not be a member of the Legislature, and who is engaged in private business; and
- One member appointed by the Minority Leader of the House of Representatives, who shall not be a member of the Legislature, and who is engaged in private business.

Members would be subject to confirmation by the Senate, and would be permitted to serve for two successive two-year terms.

Duties of the Council

The bill would charge the Council on Efficient Government to:

- Review and evaluate whether there is a cost savings to outsourcing goods, services, operations, and functions provided by a State agency to a private business or not-for-profit organization;
- Review instances where a State agency provides goods and services in competition with private business and determine ways to eliminate the competition;
- Review and evaluate instances where a State agency is providing goods or services that replicate, duplicate, or compete with one or more not-for-profit organizations or federal or local units of government;
- Request State agencies make an inventory of the agency's activities that may be outsourced or that compete with, replicate, or duplicate activities provided by private entities or federal or local units of government;
- Develop and implement a standard process to review business cases, which are proposals to outsource a State agency activity or to eliminate duplication of the agency activity;
- Make recommendations to State agencies regarding outsourcing goods, services, operations, and functions based on the Council's review, and identify and distribute to State agencies information regarding the best practices in outsourcing efforts;
- Submit an annual report to the Governor, the House Appropriations Committee, and the Senate Ways and Means Committee no later than January 15 which contains the details of the Council's review and recommendations; and

- Submit a report on a business case to the entity that initially submitted the business case and to the State agency which performs the activity that is the subject of the business case. Any State agency that receives a report would be required to respond to the Council within 45 days of receiving the report.

The Council would be staffed by the Legislative Research Department.

Agency Reporting Requirements

The bill would require the Director of the Division of Purchases, or the director of a State agency where a contract is awarded by the State agency, rather than the Department of Administration, to create a written report explaining why a vendor, under certain circumstances, was not selected and why the deficiencies in the vendor's bid could not be remedied. Those circumstances would be:

- When the vendor has submitted the lowest bid; and
- When the vendor is domiciled in Kansas, is subject to Kansas income taxes, and proposes to have the work performed by employees subject to Kansas income withholding taxes.

Additionally, the bill would require the head of any agency to conduct a review and evaluation of any State contract for the purchase of goods or services which includes an automatic renewal or extension to determine if the contract should be renewed. If the agency head determines that it is in the agency's best interest to allow the contract to be automatically renewed, the head of the agency would be required to prepare a written explanation detailing the reasons why the contract was allowed to be renewed.

The bill would require the Director of the Division of Purchases to transmit an annual report including all the written explanations prepared by the Director of Purchases, or by the directors of State agencies, to the House Appropriations Committee, the Senate Ways and Means Committee, and the Council on Efficient Government, on or before January 12.

Additional Provisions

The bill would prohibit the Director of Purchases and any state agency from drafting specifications for bids that would limit the bidding, directly or indirectly, to any one contractor, subcontractor, manufacturer, or supplier. All materials called for in a request for proposal would be required to be specified by ANSI number or BHMA product number. The bill would prohibit any outside specification writer who is a representative, supplier, or owner who is associated with a manufacturer.

The bill would exempt contracts related to road, bridge, or public transportation construction programs. Activities and contracts of the Board of Regents and its postsecondary institutions would not be subject to the Act as well.

Background

The Committee amended the bill to insert the provisions of Substitute for House Bill 2403, excluding an amendment related to vendor verification of employment eligibility. The Committee added one new section as well. The new section would prohibit the Director of Purchases and any state agency from drafting specifications for bids that would limit bidding to any one vendor, set forth product requirements when specific materials are to be used, and prohibit any outside specification writer who is associated with a manufacturer.

Senate Bill 446 Background

The committee heard from a representative of the Division of Purchases in favor of the bill. The conferee testified that the state's new financial management system will use electronic processes, such as "stamping" electronic signatures on purchasing documents. Those processes would make it possible to create a requisition, process a purchase order, receive goods and pay an invoice without ever printing a document. The conferee testified that all review and evaluation processes with regard to state contracts would remain in place.

No opponents testified against the bill.

A fiscal note was prepared by the Division of the Budget which indicates no fiscal impact should the bill be enacted.

Substitute for House Bill 2403 Background

The Committee heard testimony from Representative Marvin Kleeb in favor of the bill. The Committee also heard testimony from representatives of the Reason Foundation, the American Council on Engineering Companies of Kansas, and the American Institute of Architects in Kansas. Written testimony in favor of the bill was provided by the Wichita Independent Business Association and the Kansas Chamber of Commerce. In general, those who testified in favor of the bill supported the creation of the Council as a means to review governmental functions and find cost savings by contracting with private business.

The Director of Purchases testified as a neutral party to the bill. The conferee cited areas in which the state currently contracts with private business to save costs.

A representative of the Associated General Contractors of Kansas, Inc., testified in opposition to the bill. The conferee testified that the reporting requirements would take a step in the direction of providing preference to in-state vendors, which may

subject Kansas vendors to reciprocal preference laws in other states. Reciprocal preference laws in other states would make it more difficult for Kansas businesses to win bids in other states.

The Kansas Board of Regents provided written testimony opposing the bill. The conferee noted the reporting requirements would create additional administrative work, thereby increasing the cost of purchasing.

The House Appropriations Committee eliminated all provisions in the original version of HB 2403 and inserted the current provisions. The original bill created the Transparency and Accountability in Purchasing and State Spending Act.

The Committee heard testimony that the fiscal note prepared for the introduced version of the bill is not applicable to the substitute bill.

The House Committee of the Whole amended the bill to include a provision excluding building construction contracts from reporting requirements. The Committee also amended the bill to include provisions which would require vendors to verify the identity of employees by using a federal *I-9* form, and would prohibit vendors who have violated state or federal laws relating to the employment of illegal aliens for a period of five years. The Committee of the Whole referred the bill back to the House Appropriations Committee, which removed the vendor verification provision.