

Substitute for HOUSE BILL No. 2534

By Committee on Appropriations

3-15

AN ACT concerning the Kansas public employees retirement system; relating to certain contracts for professional or consultant services; prescribing certain procedures and reports; amending K.S.A. 2000 Supp. 75-37,132 and 75-37,135 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 75-37,132 is hereby amended to read as follows: 75-37,132. (a) Except as provided in this section, all contracts for professional and consultant services, shall be negotiated in accordance with the provisions of K.S.A. 75-37,102, and amendments thereto.

(b) The provisions of subsection (a) shall not apply to any contract for professional or consultant services that the director of purchases determines meets one or more of the criteria established in subsections (a) and (h) of K.S.A. 75-3739, and amendments thereto. When the director of purchases approves a contract for professional or consultant services under this subsection, the director may delegate authority to the agency to enter into the contract under conditions and procedures prescribed by the director.

(c) The provisions of subsection (a) shall not apply to any contract for professional or consultant services that is not anticipated to exceed \$25,000 in any fiscal year. Such a contract shall be entered into by the state agency on the basis of competitive negotiations with at least two individuals or firms unless the head of the agency determines that competitive negotiations are not in the best interest of the state. The agency head shall make a report to the director of purchases at least once in each calendar quarter during the term of each contract for professional or consultant services that exceeds \$5,000 and that was entered into without competitive negotiations.

(d) The director of purchases shall prepare a detailed report at least once in each calendar quarter during the term of each contract for professional or consultant services that exceeds \$5,000 that is entered into under subsection (b) and all contracts for professional or consultant services reported to the director under subsection (c). The director of purchases shall submit such report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate, the chair-

1 person of the committee on appropriations of the house of representatives
2 and the chairperson of the Kansas performance review board.

3 (e) All contracts for architectural services, engineering services, con-
4 struction management or ancillary technical services entered into by a
5 state agency shall be entered into in accordance with the provisions of
6 K.S.A. 75-430a, 75-1250 through 75-1266 and 75-5801 through 75-5807,
7 and amendments thereto.

8 (f) All contracts for professional services entered into by the board of
9 governors of the health care stabilization fund shall be entered into in
10 accordance with the provisions of K.S.A. 40-3410 and 40-3411, and
11 amendments thereto.

12 (g) Upon written certification from the commissioner of insurance to
13 the director of purchases and the legislative budget committee that an
14 emergency exists and the best interests of the state would be jeopardized
15 by compliance with subsection (a), the provisions of subsections (a) and
16 (c) shall not apply to contracts for legal services performed under article
17 36 of chapter 40 of the Kansas Statutes Annotated.

18 (h) *In the case of any contract for professional services or consultant*
19 *services for the board of trustees of the Kansas public employees retire-*
20 *ment system that is negotiated in accordance with the provisions of K.S.A.*
21 *75-37,102, and amendments thereto:*

22 (1) *The negotiating committee shall be composed of the members of*
23 *the board of trustees, notwithstanding the provisions of subsection (b) of*
24 *K.S.A. 75-37,102, and amendments thereto, to the contrary; and*

25 (2) *the board of trustees shall report each contract for professional*
26 *services or consultant services entered pursuant to this subsection to the*
27 *director of purchases, including the rationale of the board of trustees if*
28 *the bid or proposal selected by the board of trustees was not the lowest*
29 *cost bid or proposal submitted and a report of such contract and such*
30 *rationale shall be included in the report submitted by the director of pur-*
31 *chases pursuant to subsection (e) of K.S.A. 75-37,102, and amendments*
32 *thereto.*

33 Sec. 2. K.S.A. 2000 Supp. 75-37,135 is hereby amended to read as
34 follows: 75-37,135. (a) (1) Prior to entering a contract for legal services
35 where the amount of the fees paid to an attorney or firm of attorneys
36 reasonably may exceed \$1,000,000, the director of purchases shall submit
37 the proposed request for proposal to the legislative budget committee.
38 Within 30 days after submission of such request for proposal, the com-
39 mittee may hold a public hearing on the proposed request for proposal
40 and shall issue a report to the director of purchases. The report shall
41 include any proposed changes to the proposed request for proposal sug-
42 gested by the committee. The committee is not authorized to waive the
43 evidentiary privileges of the state, or any of the persons or entities that

1 state attorneys are representing or acting in concert with in any litigation
2 or anticipated litigation. The committee, the director of purchases and
3 their employees shall take all reasonable steps to protect such privileges.
4 The director of purchases shall review the report and adopt a final request
5 for proposal as deemed appropriate in view of the report and shall file
6 the final request for proposal with the legislative budget committee.

7 (2) If the proposed request for proposal does not contain the changes
8 proposed by the committee, the director of purchases shall submit with
9 the final request for proposal a letter stating the reasons why such pro-
10 posed changes were not adopted. The director of purchases shall not
11 release the final request for proposal until at least 10 days after the date
12 of submission of the final request for proposal to the legislative budget
13 committee.

14 (3) If the legislative budget committee makes no suggested changes
15 to the proposed request for proposal or fails to report any suggested
16 changes within 60 days of the submission of the proposed request for
17 proposal to such committee, the director of purchases may release the
18 request for proposal.

19 (b) After awarding a contract for legal services where the amount of
20 the fees paid to an attorney or firm of attorneys reasonably may exceed
21 \$1,000,000, the director of purchases shall submit the contract to the
22 legislative budget committee. Within 30 days after submission of such
23 contract, the committee may hold a public hearing on the contract and
24 shall issue a report to the director of purchases. The report shall include
25 any concerns of the committee.

26 (c) The provisions of this section shall not apply in any action in which
27 the state of Kansas or any state agency, officer or employee is a defendant
28 and a contract for legal services is to be entered. The director of purchases
29 shall prepare a report each calendar quarter while such legal proceeding
30 is in progress. Such report shall include the case citation and the date
31 upon which the action was filed. The director of purchases shall submit
32 the report to the legislative coordinating council, the chairperson of the
33 committee on ways and means of the senate, the chairperson of the com-
34 mittee on appropriations of the house of representatives and the chair-
35 person of the Kansas performance review board.

36 (d) The director of purchases shall prepare a detailed report at least
37 once in each calendar quarter of each legal proceeding which has been
38 completed and for which a contingency fee arrangement was entered.
39 Such report shall disclose the hours worked on the case, the expenses
40 incurred, the aggregate fee amount and a breakdown as to the hourly
41 rate, based on hours worked divided into fee recovered, less expenses.
42 The director of purchases shall submit the report to the legislative coor-
43 dinating council, the chairperson of the committee on ways and means

1 of the senate, the chairperson of the committee on appropriations of the
2 house of representatives and the chairperson of the Kansas performance
3 review board.

4 (e) Reasonable attorney fees to be paid by the state or defendant in
5 an action where the attorney was hired by the state with a contingency
6 fee agreement shall be approved by the judge after an evidentiary hearing
7 and prior to final disposition of the case by the district court. Any indi-
8 vidual may provide information to the court and be heard before the court
9 with regard to the reasonableness of attorney fees paid by the state or
10 defendant under the contingency fee agreement. Compensation for rea-
11 sonable attorney fees for services performed in an appeal of a judgment
12 in any such action to the court of appeals shall be approved after an
13 evidentiary hearing by the chief judge or by the presiding judge of the
14 panel hearing the case. Compensation for reasonable attorney fees for
15 services performed in an appeal of a judgment in any such action to the
16 supreme court shall be approved after an evidentiary hearing by the de-
17 partmental justice for the department in which the appeal originated. In
18 determining the reasonableness of such compensation, the judge or jus-
19 tice shall consider the following:

20 (1) The time and labor required, the novelty and difficulty of the
21 questions involved and the skill requisite to perform the legal service
22 properly.

23 (2) The likelihood, if apparent to the client, that the acceptance of
24 the particular employment will preclude other employment by the
25 attorney.

26 (3) The fee customarily charged in the locality for similar legal
27 services.

28 (4) The amount involved and the results obtained.

29 (5) The time limitations imposed by the client or by the
30 circumstances.

31 (6) The nature and length of the professional relationship with the
32 client.

33 (7) The experience, reputation and ability of the attorney or attorneys
34 performing the services.

35 (8) Whether the fee is fixed or contingent.

36 (f) *In the case of any contract for legal services for the board of trus-*
37 *tees of the Kansas public employees retirement system negotiated or to be*
38 *negotiated in accordance with the provisions of K.S.A. 75-37,102, and*
39 *amendments thereto, where the amount of fees paid to an attorney or to*
40 *a firm of attorneys reasonably may exceed \$1,000,000, references to the*
41 *“director of purchases” in subsections (a), (b) and (c) of this section shall*
42 *be construed to apply to the board of trustees of the Kansas public em-*
43 *ployees retirement system and each duty or function prescribed in such*

1 *subsections shall be assumed and performed by the board of trustees of*
2 *the Kansas public employees retirement system.*

3 Sec. 3. K.S.A. 2000 Supp. 75-37,132 and 75-37,135 are hereby
4 repealed.

5 Sec. 4. This act shall take effect and be in force from and after its
6 publication in the Kansas register.

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