

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2004

## HOUSE BILL No. 2688

By Committee on Appropriations

2-3

12 AN ACT concerning state procurement; relating to state purchase of  
13 products by certain qualified vendors; amending K.S.A. 75-3317, 75-  
14 3319, 75-3321 and 75-3322 and K.S.A. 2003 Supp. 75-3320 and re-  
15 pealing the existing sections.

16

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

18 Section 1. K.S.A. 75-3317 is hereby amended to read as follows: 75-  
19 3317. As used in K.S.A. 75-3317 through 75-3322, and amendments  
20 thereto, unless the context requires otherwise:

21 (a) "Director of purchases" means the director of purchases of the  
22 department of administration;

23 (b) ~~"Kansas industries for the blind division and rehabilitation serv-~~  
24 ~~ices" means workshops and home industry projects for blind or other~~  
25 ~~handicapped persons which are located in Kansas and which are sup-~~  
26 ~~ported, operated or supervised by the division of services for the blind or~~  
27 ~~rehabilitation services of the department of social and rehabilitation serv-~~  
28 ~~ices "qualified vendor" means a not-for-profit entity incorporated in the~~  
29 ~~state of Kansas that:~~

30 (1) *Primarily employs the blind or disabled;*

31 (2) *is operated in the interest of and for the benefit of the blind or*  
32 *persons with other severe disabilities, or both;*

33 (3) *the net income of such entity shall not, in whole or any part,*  
34 *financially benefit any shareholder or other individual; and*

35 (4) *such qualified vendor's primary purpose shall be to provide em-*  
36 *ployment for persons who are blind or have other severe disabilities;*

37 (c) "state agency" means any state office or officer, department,  
38 board, commission, institution, bureau or any agency, division or any unit  
39 within an office, department, board, commission or other state authority;

40 (d) ~~"rehabilitation facility" means any community mental health cen-~~  
41 ~~ter or community facility for the mentally retarded operating under K.S.A.~~  
42 ~~19-4001 et seq. and amendments thereto or nonprofit corporation con-~~  
43 ~~tracting with a mental retardation governing board to provide services~~

1 under K.S.A. 19-4001 *et seq.* and amendments thereto, which has regis-  
2 tered with the secretary of social and rehabilitation services for the pur-  
3 poses of K.S.A. 75-3317 through 75-3322, and amendments thereto, and  
4 shall also mean the Kansas foundation for the blind, Wichita, Kansas,  
5 center industries, inc., Wichita, Kansas, and, upon registration hereunder,  
6 any workshop or other facility for blind or other handicapped persons  
7 which is located in Kansas and which is certified to the United States  
8 department of labor and licensed by the secretary of social and rehabili-  
9 tation services as a sheltered workshop under K.S.A. 75-3307b and  
10 amendments thereto. *“Unified school district” means any unified school*  
11 *district, board of education or any unit within a unified school district or*  
12 *board of education, including, but not limited to, school buildings, athletic*  
13 *facilities, maintenance facilities and administrative facilities, and any pur-*  
14 *chasing cooperative which includes one or more unified school districts,*  
15 *one or more board of education, or any affiliated not-for-profit support*  
16 *entity including, but not limited to, a parent teacher association or parent*  
17 *teacher organization; or any purchasing cooperative formed by one*  
18 **or more unified school district.**

19 (e) *“committee” means the state use law committee authorized pur-*  
20 *suant to section 6, and amendments thereto.*

21 Sec. 2. K.S.A. 75-3319 is hereby amended to read as follows: 75-  
22 3319. (a) The ~~director of purchases committee~~ **director of purchases**  
23 shall determine fair market prices of products manufactured, processed  
24 and offered for sale and of services offered under K.S.A. 75-3317 through  
25 75-3322, and amendments thereto, by the Kansas industries for the blind  
26 division and rehabilitation services and by each rehabilitation facility *qual-*  
27 *ified vendors*. All of the products and services shall be standard conform-  
28 ing. Those products and services offered for purchase by or for a state  
29 agency shall meet specifications required by the director of purchases.  
30 Those products *and services* offered for purchase by or for a unified  
31 school district shall meet specifications required by the board of education  
32 of the unified school district. The director of purchases shall revise the  
33 prices determined under this section from time to time in accordance  
34 with changing market conditions.

35 (b) Each ~~rehabilitation facility~~ *qualified vendor* shall cooperate with  
36 and shall provide the ~~director of purchases and the secretary of social and~~  
37 ~~rehabilitation services committee~~ with all information necessary for the  
38 administration of K.S.A. 75-3317 through 75-3322, and amendments  
39 thereto.

40 (c) The provisions of K.S.A. 75-3317 through 75-3322, and amend-  
41 ments thereto, shall apply only to products manufactured or processed in  
42 Kansas or services provided in Kansas by blind or other handicapped  
43 persons *by a qualified vendor*.

1 (d) ~~The provisions of K.S.A. 75-3317 through 75-3322, and amend-~~  
2 ~~ments thereto, shall not be construed to require a unified school district~~  
3 ~~to purchase services offered by blind or other handicapped persons under~~  
4 ~~this act. The committee shall maintain a registry of entities which meet~~  
5 ~~the definition of qualified vendor, as defined by K.S.A. 75-3317, and~~  
6 ~~amendments thereto.~~

7 **(e) The director of purchases shall convene quarterly meetings**  
8 **with qualified vendors, the state use law committee and agencies**  
9 **to discuss the state use law.**

10 Sec. 3. K.S.A. 2003 Supp. 75-3320 is hereby amended to read as  
11 follows: 75-3320. (a) ~~The secretary of social and rehabilitation services~~  
12 ~~committee~~ **qualified vendors** shall furnish to the department of admin-  
13 istration, and to each person or officer authorized to purchase materials,  
14 services and supplies for any state agency or unified school district, a list  
15 of products manufactured, processed ~~and offered for sale~~ and of services  
16 offered under K.S.A. 75-3317 through 75-3322, and amendments thereto,  
17 by ~~the Kansas industries for the blind division and rehabilitation services~~  
18 ~~and by rehabilitation facilities~~ *qualified vendors*.

19 (b) ~~The list of products and services shall be certified by the director~~  
20 ~~of purchases. The secretary of social and rehabilitation services shall~~  
21 ~~amend such list from time to time in accordance with the recommenda-~~  
22 ~~tions of the director of purchases.~~

23 ~~(c) The secretary of social and rehabilitation services may charge a~~  
24 ~~reasonable publication fee to those rehabilitation facilities which advertise~~  
25 ~~their products or services on such lists. The secretary of social and re-~~  
26 ~~habilitation services shall remit all moneys received pursuant to this sec-~~  
27 ~~tion to the state treasurer in accordance with the provisions of K.S.A. 75-~~  
28 ~~4215, and amendments thereto. Upon receipt of each such remittance,~~  
29 ~~the state treasurer shall deposit the entire amount in the state treasury~~  
30 ~~to the credit of the social welfare fund. The list of products and serv-~~  
31 ~~ices shall be certified by the director of purchases. Each qualified~~  
32 ~~vendor shall submit to the committee, the director of purchases, state~~  
33 ~~agencies and unified school districts a list of the products manufac-~~  
34 ~~tured, processed and offered for sale and of services offered under K.S.A.~~  
35 ~~75-3317 through 75-3322, and amendments thereto.~~

36 (c) *Each qualified vendor shall publish or cause to be published, a*  
37 *catalog of products manufactured, processed and offered for sale and of*  
38 *services offered under K.S.A. 75-3317 through 75-3322, and amendments*  
39 *thereto, by each such vendor. Such catalog shall be submitted to the com-*  
40 *mittee and to the director of purchases who shall distribute such catalog*  
41 *to each state agency and unified school district.*

42 (d) *The products manufactured, processed and offered for sale and*  
43 *services offered under K.S.A. 75-3317 through 75-3322, and amendments*

1 *thereto, by a qualified vendor shall not be required to be published in the*  
2 *catalog in order to be subject to the provisions of K.S.A. 75-3317 through*  
3 *75-3322, and amendments thereto.*

4 **(e) It shall be the responsibility of the qualified vendors to pro-**  
5 **vide appropriate notice to state agencies and unified school dis-**  
6 **tricts of the addition of any product or service provided by a qual-**  
7 **ified vendor after the publication of the catalog, provided the**  
8 **additional product or service has been approved by the state use**  
9 **law committee.**

10 Sec. 4. K.S.A. 75-3321 is hereby amended to read as follows: 75-  
11 3321. *(a) The director of purchases and any person or officer authorized*  
12 *to purchase materials and supplies for any state agency or unified school*  
13 *district or to purchase services for any state agency shall purchase, except*  
14 *as otherwise provided in this section, the products and services on the list*  
15 *certified by the director of purchases from the Kansas industries for the*  
16 *blind division and rehabilitation services or from a rehabilitation facility*  
17 *qualified vendors, when those products are to be procured by or for the*  
18 *state or unified school district or when those services are to be procured*  
19 *by or for the state. Services offered for purchase are not required to be*  
20 *purchased by a unified school district.*

21 *(b) Purchases made for a state agency by an affiliated organization,*  
22 *including, but not limited to, an endowment association, are subject to the*  
23 *provisions of this act and shall be deemed to be direct purchases by such*  
24 *state agency or unified school district.*

25 Sec. 5. K.S.A. 75-3322 is hereby amended to read as follows: 75-  
26 3322. *(a) Whenever the Kansas industries for the blind division and re-*  
27 *habilitation services and rehabilitation facilities qualified vendors are un-*  
28 *able to supply the products or services needed or are unable to meet*  
29 *delivery requirements on any order or requisition, the state agency or*  
30 *unified school district may request a written waiver shall immediately be*  
31 *forwarded to the director of purchases or purchasing officer of the unified*  
32 *school district by the secretary of social and rehabilitation services or the*  
33 *secretary's designee and that. Such waiver shall relieve and exempt the*  
34 *state or unified school district purchasing authority from the mandatory*  
35 *provisions of K.S.A. 75-3317 to 75-3322, inclusive, and amendments*  
36 *thereto, in the case of the specific order, request or requisition.*

37 *(b) The committee may grant a waiver only when both of the follow-*  
38 *ing conditions are met:*

39 *(1) The qualified vendor cannot furnish the product or service within*  
40 *the period specified; and*

41 *(2) the product or service is available from commercial sources in the*  
42 *quantities needed and delivery will be significantly sooner than it will be*  
43 *available from the qualified vendor.*

1 (c) *The state agency or unified school district must provide the state*  
2 *use law committee sufficient evidence to indicate such conditions are met.*

3 (d) *The committee shall submit the written waiver to the appropriate*  
4 *qualified vendor.*

5 (e) *A waiver must be applied for each time a qualified vendor cannot*  
6 *meet delivery requirements for any individual purchase by a state agency,*  
7 *as prescribed by subsection (a) of this section.*

8 **(f) Waivers may be granted directly by the qualified vendor.**

9 **(g) If the qualified vendor does not grant the waiver, the state**  
10 **agency or unified school district can appeal this decision to the**  
11 **director of purchases. The qualified vendor may appeal the deci-**  
12 **sion of the director of purchases to the state use law committee.**

13 New Sec. 6. (a) There is hereby established within the department  
14 of administration, the state use law committee, hereafter referred to as  
15 the committee, to facilitate the purchase of products and services pro-  
16 vided by blind or disabled persons, which shall consist of ~~14~~ 6 members.

17 (b) The state use law committee shall be composed of the following  
18 members:

19 ~~(1) One member shall be the director of purchases or the director's~~  
20 ~~designee.~~

21 ~~(2) One member shall be the secretary of administration or the sec-~~  
22 ~~retary's designee.~~

23 ~~(3) Three members shall be representatives from private businesses~~  
24 ~~who are knowledgeable of the needs and concerns of the blind and dis-~~  
25 ~~abled in the state appointed by the governor.~~

26 ~~(4) Three members shall be representatives from private businesses~~  
27 ~~who are knowledgeable of the needs and concerns of the blind and dis-~~  
28 ~~abled in the state appointed by the governor.~~

29 ~~(5) One member shall be a person appointed by the speaker of the~~  
30 ~~house of representatives.~~

31 ~~(6) One member shall be a person appointed by the majority leader~~  
32 ~~of the house of representatives.~~

33 ~~(7) One member shall be a person appointed by the minority leader~~  
34 ~~of the house of representatives.~~

35 ~~(8) One member shall be a person appointed by the president of the~~  
36 ~~senate.~~

37 ~~(9) One member shall be a person appointed by the majority leader~~  
38 ~~of the senate.~~

39 ~~(10) One member shall be a person appointed by the minority leader~~  
40 ~~of the senate.~~

41 **(1) One member shall be appointed by the unified school**  
42 **superintendents.**

43 **(2) One member shall be appointed by the state board of**

1 **regents.**

2 **(3) One member shall be appointed by the state director of**  
3 **purchases.**

4 **(4) Two members who are knowledgeable of the employment**  
5 **and training needs and concerns of the blind and disabled in Kan-**  
6 **sas shall be appointed by the governor.**

7 **(5) One member who is a qualified vendor shall be appointed**  
8 **by the governor.**

9 (c) Such members shall serve for terms of ~~two~~ **one** years, except that  
10 of the members first appointed, ~~two~~ **one** members appointed pursuant  
11 to paragraph (3) of subsection (b) of this section, and two members ap-  
12 pointed pursuant to paragraph (4) of subsection (b) of this section, as  
13 designated by the governor, shall serve terms of one year. Members ap-  
14 pointed pursuant to paragraph (3) and (4) of subsection (b) of this section  
15 shall be eligible for reappointment. On July 1, of each year, the governor  
16 shall designate one of the gubernatorially appointed members to serve as  
17 a chairperson of the committee. Subsequent appointments shall be made  
18 as provided for original appointments for the unexpired terms.

19 (d) Members of the committee shall serve without compensation.  
20 Members of the committee attending meetings of the committee, or at-  
21 tending a subcommittee thereof authorized by such committee, shall be  
22 paid amounts provided in subsection (e) of K.S.A. 75-3223, and amend-  
23 ments thereto.

24 (e) The committee shall be responsible for carrying out the following  
25 functions in support of its mission to provide employment opportunities  
26 for persons who are blind or have other severe disabilities:

27 ~~(1) To request from any state agency information as to product spec-~~  
28 ~~ification and service requirements in order to carry out its purpose.~~

29 ~~—(2) To meet as necessary to carry out its purposes.~~

30 ~~—(3) To request an annual report from each participating qualified ven-~~  
31 ~~дор describing the volume of sales for each product or service sold under~~  
32 ~~the provisions of K.S.A. 75-3317 through 75-3322, and amendments~~  
33 ~~thereto.~~

34 ~~—(4) To prepare a report for the legislature and the governor annually.~~

35 ~~—(5) To distribute a publication that lists all supplies and services cur-~~  
36 ~~rently available from any qualified vendor. This list and any revisions shall~~  
37 ~~be distributed to all purchasing agencies.~~

38 ~~—(6) To develop guidelines to be followed by qualifying agencies and~~  
39 ~~unified school districts for participation under the provisions of K.S.A.~~  
40 ~~75-3317 through 75-3322, and amendments thereto. The guidelines shall~~  
41 ~~be developed on or before six months after the effective date of this act~~  
42 ~~and made available on a nondiscriminatory basis to all qualifying agencies.~~

43 ~~—(7) To review all bids submitted under the provisions of K.S.A. 75-~~

1 ~~3317 through 75-3322, and amendments thereto, and reject any bid for~~  
2 ~~any purchase that is determined to be a substantially higher cost than the~~  
3 ~~purchase would have cost had it been competitively bid.~~

4 ~~—(8) Establish rules, regulations and policies to assure effective imple-~~  
5 ~~mentation of this act, including appropriate rules and regulations relating~~  
6 ~~to violations of K.S.A. 75-3317 through 75-3322, and amendments~~  
7 ~~thereto.~~

8 ~~—(9) Publish, or cause to be published, a procurement list of products~~  
9 ~~manufactured, processed and offered for sale and of services offered un-~~  
10 ~~der K.S.A. 75-3317 through 75-3322, and amendments thereto, by qual-~~  
11 ~~ified vendors and distribute this list to the department of administration,~~  
12 ~~and to each person or officer authorized to purchase materials, services~~  
13 ~~or supplies for any state agency or unified school district. Publish, or cause~~  
14 ~~to be published, notice of of additions to the procurement list in the~~  
15 ~~Kansas Register. Delete such products manufactured, processed and of-~~  
16 ~~fered for sale and services offered under K.S.A. 75-3317 through 75-3322,~~  
17 ~~and amendments thereto, which are no longer furnished by a qualified~~  
18 ~~vendor or vendors.~~

19 ~~—(10) Approve fair market prices for items added to the procurement~~  
20 ~~list and revise such prices in accordance with changing market conditions~~  
21 ~~to assure that the prices established are reflective of the market. It shall~~  
22 ~~be the responsibility of the qualified vendor to provide to the committee~~  
23 ~~price comparisons and price data for products manufactured, processed~~  
24 ~~and offered for sale and of services offered under K.S.A. 75-3317 through~~  
25 ~~75-3322, and amendments thereto.~~

26 ~~—(11) Inform state agencies and unified school districts about the prod-~~  
27 ~~ucts manufactured, processed and offered for sale and services offered~~  
28 ~~under K.S.A. 75-3317 through 75-3322, and amendments thereto, and~~  
29 ~~the statutory mandate that items on the procurement list be purchased~~  
30 ~~from qualified vendors, and encourage and assist state agencies and uni-~~  
31 ~~fied school districts to identify additional commodities and services that~~  
32 ~~may be purchased from qualified nonprofit agencies. To the extent pos-~~  
33 ~~sible, monitor state agencies and unified school districts compliance with~~  
34 ~~such requirements.~~

35 ~~—(12) Conduct a continuing study and evaluation of activities under~~  
36 ~~K.S.A. 75-3317 through 75-3322, and amendments thereto, and section~~  
37 ~~6 through 9, and amendments thereto, for the purpose of assuring effec-~~  
38 ~~tive and efficient administration of K.S.A. 75-3317 through 75-3322, and~~  
39 ~~amendments thereto and section 6 through 9, and amendments thereto.~~  
40 ~~The committee may study, independently or in cooperation with other~~  
41 ~~public or nonprofit private agencies, problems relating to:~~

42 ~~—(A) The employment of the blind or individuals with other severe~~  
43 ~~disabilities, or both.~~

- 1 —(B) The development and adaptation of production methods, which  
2 would enable a greater utilization of such individuals.
- 3 — New Sec. 7. (a) The committee shall be responsible for approving  
4 fair market prices, and changes thereto, for products manufactured, pro-  
5 cessed and offered for sale and of services offered under K.S.A. 75-3317  
6 through 75-3322, and amendments thereto, on the procurement list. The  
7 committee shall approve an initial fair market price at the time a product  
8 manufactured, processed and offered for sale and a service offered under  
9 K.S.A. 75-3317 through 75-3322, and amendments thereto, is added to  
10 the procurement list. Such initial price shall be based on committee pro-  
11 cedures, which shall permit negotiations between the contracting activity  
12 and the qualified vendor, which shall produce or provide the commodity  
13 or service to the state, assisted by the appropriate qualified vendor. If  
14 agreed to by the negotiating parties, such initial price may be developed  
15 using other methodologies specified in committee pricing procedures.
- 16 —(b) Prices shall be revised in accordance with changing market con-  
17 ditions under committee procedures, which shall include negotiations be-  
18 tween state agencies or unified school districts and producing qualified  
19 vendors, or the use of economic indices, changes in qualified vendors  
20 costs, or other methodologies permitted under these procedures.
- 21 —(c) Recommendations for initial fair market prices, or changes  
22 thereto, shall be submitted jointly by state agencies or unified school  
23 districts and the qualified vendors. After review and analysis, the qualified  
24 vendors shall submit the recommended prices and methods by which  
25 prices shall be changed to the committee, along with the information  
26 required by committee pricing procedures to support each recommen-  
27 dation. The committee shall review the recommendations, revise the rec-  
28 ommended prices where appropriate, and establish a fair market price,  
29 or change thereto, for each commodity or service, which is the subject of  
30 a recommendation.
- 31 — New Sec. 8. (a) The committee shall maintain a procurement list  
32 which shall include the commodities and services which shall be procured  
33 by state departments and agencies under the provisions of K.S.A. 75-3317  
34 through 75-3322, and amendments thereto, and section 6 through 9, and  
35 amendments thereto, from the qualified vendors. Copies of the procure-  
36 ment list, together with information on procurement requirements and  
37 procedures, shall be available to state agencies or unified school districts  
38 upon request.
- 39 (1) **If anyone, including qualified vendors, becomes aware that**  
40 **state agencies or unified school districts are not complying with**  
41 **this law, they may forward to the state use law committee a report**  
42 **of such non-compliance.**
- 43 (2) **The state use law committee shall perform an evaluation of**



1 the report and make its own findings.

2 (3) Such findings shall be forwarded to the secretary of admin-  
3 istration for administrative action including enforcement of the  
4 state use law.

5 (4) The state use law committee shall address the following is-  
6 sues and shall issue a report on these issues to qualified vendors,  
7 the director of purchases, the secretary of administration and the  
8 state board of regents on or before January 1, 2005:

9 (A) The pricing process used by the director of purchases for  
10 eligible products and services.

11 (B) Product and service eligibility process used by the director  
12 of purchases for state use law products and services.

13 (C) Review of waivers granted by vendors and the director of  
14 purchases.

15 (D) Application of the state use law to purchasing cards.

16 (E) Threshold dollar amount of purchase by state agencies or  
17 unified school districts for state use law to apply.

18 (F) Development of an electronic procurement system for the  
19 state use law system.

20 (G) Any other issue identified by interested parties.

21 ~~(b)~~ (f) Additions to and deletions from the procurement list shall be  
22 published in the Kansas Register after such addition or deletion, or both  
23 is approved by the committee.

24 [Sec. 7. The department of social and rehabilitation services  
25 shall not make any contract for the customer service program re-  
26 lating to the electronic benefit transfer portion of the food stamp  
27 vision card program with any contractor or vendor who performs,  
28 or subcontracts or otherwise procures the services or work con-  
29 tracted for, at a location outside of the United States. Each con-  
30 tractor or vendor submitting a bid to contract to provide services  
31 or work for a state agency shall certify that the services or work  
32 covered by the bid or contract will be performed at a location in  
33 the United States. No expenditures shall be made under any such  
34 contract upon a finding that the contractor or vendor, or any sub-  
35 contractor thereof, during the term of the contract shifts services  
36 or work on any such contract to a location outside of the United  
37 States and the contract shall be terminated for noncompliance.  
38 Any such contract shall contain provision which allows for the em-  
39 ployment of qualified TAF recipients to provide services under  
40 such contract.]

41 Sec. 9- ~~7~~ [8.] K.S.A. 75-3317, 75-3319, 75-3321 and 75-3322 and  
42 K.S.A. 2003 Supp. 75-3320 are hereby repealed.

43

1     Sec. ~~40. 8.~~ **[9.]** This act shall take effect and be in force from and  
2     after its publication in the statute book.