

Approved 3-27-90
Date

MINUTES OF THE SEN ATE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Senator Dave Kerr at
Chairperson

8:00 a.m./~~pm~~ on Tuesday, February 20, 1990 in room 123-S of the Capitol.

All members were present except:
Senator Winter

Committee staff present:

Bill Edds, Revisor of Statutes' Office
Lynne Holt, Kansas Legislative Research Dept.
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Chairman Kerr called the meeting to order and announced the purpose of the meeting was to further discuss S.B. 437. Att.#1 is a new balloon distributed by Sen. Vidricksen. Att. #2 is a revised fiscal note stating the bill would cost approximately \$16,137.

The bill would establish the Private Enterprise Reveiw Board to receive, hold hearings on, and make a determination on complaints of state agency activities alleged to be in direct competition with the private sector. Attachment #3 is a letter submitted to the committee by Kansas Assoc. of Counties.

Chairman Kerr urged the committee to keep in mind that the issue goes far beyond the computer sales from the bookstores on which the committee heard extensive testimony.

Senator Ben Vidricksen explained the changes he was proposing on the bill. (Att.1) He explained that he wanted to delete a controversial addition in Section 1(b). He also explained that he wished to exempt Vocational Technical schools, stipulating that only schools being used for training purposes be exempt. He also expressed desire to strike Section 6 from the balloon version of the bill.

Chairman Kerr explained that with discussed deletions, the bill would enable a board to have only recommendation power to the Legislature. It would not actually have the power itself to take action against an offending company.

Senator Steineger expressed that he felt there should at least be an investigation made before conducting a hearing.

Senator Vidricksen made a motion to amend line 15 by including language that would require an investigation before holding a hearing. Senator Moran seconded. Motion carried.

Senator Vidricksen moved that all of the remaining amendments listed in the balloon, (Att. 1) be accepted. Senator Oleen seconded. Motion carried.

Senator Vidricksen moved that S.B. 437 be recommended favorably as amended. The motion failed for lack of a second.

Senator Steineger made a motion to accept the minutes of the February 13, 14, & 15 meetings along with a meeting "on the rail" on February 19th to introduce a bill. Senator Salisbury seconded. Motion carried. Attachment 2 is fiscal note.

Meeting adjourned.

SENATE BILL No. 437

By Joint Committee on Economic Development

1-8

10 AN ACT establishing the Kansas private enterprise review board;
11 duties.

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

13 Section 1. As used in this act:

14 (a) "Private enterprise" means an individual, firm, partnership,
15 joint venture, corporation, association or any other legal entity en-
16 gaging in the manufacturing, processing, sale, offering for sale, rental,
17 leasing, delivery, dispensing, distributing or advertising of goods or
18 services for profit;

19 (b) "state agency" means a department, office, commission, in-
20 stitution, board or other agency of state government. Such term shall
21 include institutions of postsecondary education;

22 (c) "board" means Kansas private enterprise review board.

23 Sec. 2. (a) There is hereby established the Kansas private en-
24 terprise review board which is composed of ~~(1) the secretary of~~
25 ~~administration and (2) two~~ representatives of the general public, who
26 are engaged in private enterprise, appointed by the governor.

27 (b) The members appointed under this section by the governor
28 shall serve at the pleasure of the governor. Not more than ~~two~~
29 members of the board shall be members of the same political party.

30 (c) The chairperson of the board shall be designated by the gov-
31 ernor. The board shall meet at least once each ~~calendar quarter~~ and
32 at such other times as may be required on call of the chairperson
33 or any ~~two~~ members thereof.

34 (d) A quorum of the Kansas private enterprise review board shall
35 be ~~two~~. All actions of the board shall be taken by a majority of all
36 of the members of the board.

37 (e) ~~Members of the Kansas private enterprise review board at-~~
38 ~~tending meetings of such board, or attending a subcommittee meet-~~
39 ~~ing thereof authorized by such board, shall be paid compensation,~~
40 ~~subsistence allowances, mileage and other expenses as provided in~~
41 ~~K.S.A. 75 3223, and amendments thereto.~~

42 Sec. 3. ~~Except as otherwise provided by this act, all budgeting,~~
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and governmental institutions or agencies which are subject to
state agency oversight

Sec. 2. Except as provided in the following provision, it is
the policy of this state that no state agency shall engage in any
activity which is in competition with private enterprise unless
the agency demonstrates to the board an overriding or compelling
public interest served by the provision of such activity. This
act shall not be applicable to any state-approved education
program directly related to the training of students.

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at least two of whom

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~~purchasing and related management functions of the Kansas private enterprise review board shall be administered by the secretary of administration under the direction and supervision of the chairperson of the board. All vouchers for expenditures and all payrolls of the Kansas private enterprise review board shall be approved by the chairperson of the board or by a person or persons designated by the chairperson.~~

Sec. 4. Clerical assistance for the board shall be provided thereto by the secretary of commerce.

Sec. 4. (a) The Kansas private enterprise review board shall:

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(1) Receive written complaints ~~from private enterprise~~ that an activity of a state agency is in direct competition with such private enterprise;

a proposal or current

(2) transmit complaints received under paragraph (1) of this subsection to the state agency alleged to be in competition with such private enterprise;

(3) hold public hearings on complaints and determine whether the state agency is in competition with such private enterprise;

(4) within 30 days after receiving the state agency's response to the complaint, issue a written report of its findings to the complaint;

(5) transmit ~~a quarterly~~ report to the legislature and the governor, including the findings, conclusions and recommendations of complaints reviewed by the board during the previous ~~quarter~~.

an annual

year

(b) The board, when reviewing the complaint in subsection (a), shall consider the following:

(1) will cessation of the activity by the state agency create a bona fide emergency;

(2) will cessation of the activity cause substantial harm or loss of substantial invested funds to the state;

(3) is there an overriding or compelling state interest;

(4) is such activity specifically authorized by law; or

(5) will cessation of the activity cause ~~substantial~~ harm to the legitimate educational needs or activities of the state.

(c) The state agency shall respond to the board, in writing, within 30 days after receipt of a complaint transmitted under paragraph (2) of subsection (a) and shall either deny or concur with the complaint and indicate any necessary and contemplated remedial measures.

(d) The board shall adopt ~~by rules and regulations~~ a procedure for an expedited hearing process if it is determined the alleged competition may cause severe financial hardship on the private enterprise filing the complaint.

Sec. 6. If the board determines that the activity is inappropriately in competition with private enterprise, and if such activity is not specifically authorized by statute, the state agency shall discontinue such activity within six months of the issuance of the board's written report of its findings until legislation is enacted specifically authorizing such activity.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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DIVISION OF THE BUDGET

MIKE HAYDEN,
Governor
MICHAEL F. O'KEEFE
Director of the Budget

Room 152-E
State Capitol Building
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(913) 296-2436

February 15, 1990
REVISED

The Honorable Dave Kerr, Chairperson
Committee on Economic Development
Senate Chamber
Third Floor, Statehouse

Dear Senator Kerr:

SUBJECT: Fiscal Note for SB 437 by Joint Committee on Economic
Development

In accordance with KSA 75-3715a, the following fiscal note concerning SB 437 is respectfully submitted to your committee.

SB 437 creates the Kansas Private Enterprise Review Board, consisting of three members: two representatives of the general public appointed by, and serving at the pleasure of, the Governor and the Secretary of Administration as an ex officio member. Not more than two members can be of the same political party.

The new board is charged with the responsibility of reviewing complaints from private enterprises with respect to the activities of state agencies (including postsecondary educational institutions) that compete directly with these private enterprises. The Board is directed to report its findings and recommendations quarterly to the Governor and the Legislature.

The total fiscal effect of this bill would be approximately \$16,137. Expenses would be incurred by the new board for per diem compensation, mileage, and subsistence in accordance with KSA 75-3223. Assuming only the two representatives of the general public would need to be reimbursed for these expenses, it is estimated that the cost would be \$2,573 for FY 1991. The estimate is based on four meetings per year, as specified in the bill.


The fiscal effect also would include the cost of staffing the new board. It is assumed that a Secretary II, working intermittently the equivalent of half time during the fiscal year, would be needed to perform such duties as processing complaints, mailing notices for board meetings, taking minutes of board meetings, and preparing written reports on

The Honorable Dave Kerr
January 24, 1990
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complaints and a quarterly report to the Legislature and the Governor. The salary cost for the position is estimated to be \$9,264. In addition, related operating expenditures would be needed: \$1,500 for telephone and postage costs, \$1,000 for printing, \$800 for office supplies, and \$1,000 for office equipment.

The costs do not include legal representation or assistance for the board, research support, or investigative costs. It is based on the assumption that the findings of the board result solely from reviews conducted solely by the board staff.

The fiscal effect, all of which would be from the State General Fund for FY 1991, would be in addition to amounts contained in the Governor's budget recommendations.



Michael F. O'Keefe
Director of the Budget

cc: Sherry Brown, Department of Administration
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Executive Director
John T. Torbert

February 19, 1990

MEMORANDUM

To: Senate Economic Development Committee

**From: John T. Torbert
Executive Director**

Subject: SB 437 (Private Enterprise Review Board)

It is our understanding that an amendment will be offered to SB 437 in committee that would bring local government under the bill's provisions. We are opposed to this.

Local officials are elected by their constituents and thus accorded with the public trust. Part of that trust means that the elected official is empowered to make decisions on how services are best provided to the entity being served. This legislation would potentially expose each and every decision of local governing bodies to second guessing and Monday morning quarterbacking. Power would shift from elected officials (where it appropriately belongs) to a non-elected state board. This power shift would mean that instead of having local officials make local policy, a state board with little or no knowledge of the reasoning behind certain decisions would make those decisions.

This bill is the creation of a new bureaucracy. This is unnecessary and unwarranted. The legislation's main impact will be slow down government even further. Such hindrances do not serve the citizens well. Counties and cities already have extensive involvement in the private sector. A partial list of areas where the private sector is used extensively is attached.

It is troubling that this legislation seems to buy into the theory that government is the bad guy and the private sector is the good guy. Such broad based sweeping characterizations are usually false and this is no exception. An ancient example may illustrate my point. Following the publication of Adam Smith's Wealth of Nations, economic liberalization swept Britain.

Parliament, showing the age's unbounded enthusiasm for the marketplace, opened London's water supply to unfettered competition. Private firms competed with one another in digging up London streets, often working 24 hours a day to be the first to complete a water line to homes and shops. Some streets had as many as three separate water lines operated by three different companies. The companies soon realized the economic insanity of such a system and formed cartels. The cartels then raised the price of water higher than it had been before "privatization."

If the state wishes to use a private enterprise board to investigate itself- so be it. But we oppose any effort to include local government in the process.

MEJPRIBD

SOME EXAMPLES OF CURRENT KANSAS 'PRIVATIZATION'

Accounting services
Data processing
Architectural services
Auditing services
Engineering services
Special legal services
Bond--fiscal advisory services
Delinquent tax collection
Property appraisal (public property)
Property reappraisal
Ordinance codification
Personnel studies
Utility rate analyses
Comprehensive plans
Animal control, pounds
Refuse collection
Refuse disposal
Sewage treatment plant--construction
Sewage treatment plant--operation
Ambulance--EMS service
Building inspection services
Removal of dilapidated structures
Weed mowing
Street maintenance and repair
Street cleaning
Most new construction--streets, sewers, buildings, etc.
Snow removal and plowing
Pavement marking
Traffic signals, installation and maintenance
Street lighting
Tree planting, maintenance and removal
Airport-fixed based operation
Airport-terminal construction
Golf course operation and maintenance
Concessions at parks and public facilities
Swimming pool operation
Electric utility plant management
CATV operation
Lease of private buildings for public purposes
Building janitorial and maintenance services
Vehicle maintenance and repair
Vehicle towing and storage
Taxi cabs--transportation
Rental of machinery and equipment
PCB, asbestos removal