

Approved 4-9-91  
Date

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS

The meeting was called to order by SENATOR DON SALLEE at  
Chairperson

12:30 ~~xxm~~/p.m. on April 3, 1991 in room 519-S of the Capitol.

All members were present ~~except~~ or excused:

Committee staff present:

Pat Mah, Legislative Research Department  
Ardan Ensley, Office of the Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Representative Ed McKechnie  
Carol Williams, Public Disclosure Commission  
Michael Woolf, Common Cause  
Stan Scudder, Kansas Contractors Association  
Jim Edwards, Kansas Chamber of Commerce and Industry and Kansas Society of Association  
Executives David Furnas, Kansas Press Association  
Trudy Aron, American Institute of Architects  
Art Griggs, Secretary of Administration  
William Henry, Executive Vice-President, Kansas Engineering Society  
George Barbee, Executive Director, Kansas Consulting Engineers  
Tom Slattery, Associated General Contractors  
Jim Kaup, General Counsel, League of Kansas Municipalities  
Craig Grant, Kansas-National Education Association  
Mark Tallman, Kansas Association of School Boards  
Harriet Lange, Kansas Association of Broadcasters  
Ron Smith, Kansas Bar Association  
Others attending: see attached list

The meeting was called to order at 1:32 p.m. by Chairman Sallee.

A motion was made by Senator Brady and seconded by Senator Lee to remove HB-2022 from the table. The motion carried.

HB-2454 - Comprehensive amendments to governmental ethics and campaign finance laws.

Representative Ed McKechnie presented testimony in support of HB-2454 noting several amendments were needed. One would remove the New Section 51 which would require newspapers to report endorsements made in newspapers to the Kansas Governmental Ethics Commission. The second amendment is a balloon amendment dealing with competitive bidding which he offered as a compromise in the House Elections Committee. (Attachment 1)

Carol Williams, Public Disclosure Commission, presented testimony on HB-2454 noting the Commission had not had an opportunity to review the specific sections of the bill to determine ramifications of the drafted language. Ms. Williams did address 4 sections which were recommendations made by her commission in its 1990 Annual Report and Recommendations. (Attachment 2)

Ms. Williams was asked how HB-2454 would affect her office should the proposed bill pass. She noted each year it was taking longer to complete the audit phase due to increased complexity and volume.

Michael Woolf, Executive Director, Common Cause, presented testimony noting that full investigative subpoena power for the Commission was the most important reform that the legislature could make in the enforcement of our ethic laws. Other important issues dealt with direct corporation and union contribution bans, other campaign finance reforms, conflict of interest reforms as well asand suggested amendments to HB-2454. (Attachment 3)

A member requested Mr. Woolf provide the committee with a list of amendments he proposed.

Stan Scudder, President, Kansas Contractors Association, Inc., presented testimony in

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS,

room 519-S, Statehouse, at 12:30 ~~xxx~~p.m. on April 3, 1991

opposition to certain sections of HB-2454. The main concerns of Mr. Scudder's organization center around Page 24, section 28 which prohibits state officers and employees who are directly responsible for contracts with private firms from working for that same firm for two years after severing ties with the state. The restraint of employment is also unfair to present and future employees of many state departments and ultimately could cause young engineers to seek work outside the state. (Attachment 4)

Jim Edwards, Kansas Chamber of Commerce and Industry, appeared to provide input on HB-2454, noting the strength and weakness of the bill. (Attachment 5)

Jim Edwards, representing the Kansas Society of Association Executives presented testimony in support of changes in hospitality and subpoena powers as well as the extension of lobbying statutes and rules and regulations to the members of the executive branch and all state officers. Also supported were efforts to provide meaningful lobbying expenditure reports. The organization opposed efforts restricting various groups making direct candidate contributions while allowing contributions to party PACs or political parties. (Attachment 6)

David Furnas, Kansas Press Association, presented testimony noting he was representing more than 250 newspapers in Kansas which opposed Section 51 of the bill, that portion dealing with the requirement for media to report editorial endorsements. (Attachment 7)

Trudy Aron, American Institute of Architects in Kansas appeared to express opposition to Sections 54 and 55 of HB-2454. (Attachment 8)

Art Griggs, Secretary of Administration, State of Kansas, told the committee he was concerned with the procurement and change order sections of the bill noting he concurred with the changes suggested by Representative McKechnie. (Attachment 9) Basically concerns were for Sections 53,54,55 and 62. Mr. Griggs expressed major concerns over the inability to make emergency purchases and procurements at local sites.

A member questioned whether the department had any input into the bill with Secretary Griggs noting they had none. The amendments were not in the bill the House originally introduced.

Bill Henry, Kansas Engineering Society, presented testimony noting that under Section 54 of HB-2454 the state would be unable to seek experts to aid in the design of engineering projects; rather the low bid would determine what is the best professional engineer for a given project. Mr. Henry requested deletion of Section 54 from the bill. (Attachment 10)

George Barbee, Kansas Consulting Engineers, representing approximately 60 engineering firms in Kansas, noted serious concern about the provisions in HB-2454 which call for competitive bidding for professional services and for competitive bidding for change orders. Mr. Barbee noted the standard for selection of engineers was established long ago at the federal level and at the state level. He noted these policies are time proven to be the best way to select engineers for engineering services. (Attachment 11) He also raised questions concerning Sections 32 and 39.

Tom Slattery, Associated General Contractors, appeared before the Committee in opposition to Sections 54 and 55 of HB-2454. He noted that in 1978 the State Advisory Committee was formed and that group had selected architects. The change order question caused his organization great concern. He noted that to keep these sections would give rise to tremendous costs and slow downs. In closing Mr. Slattery reiterated that his organization supported the deletion of Sections 54 and 55.

Jim Kaup, Kansas League of Municipalities, presented testimony expressing concerns about Section 19, page 19 and Section 53, page 42. Clarification of the intended consequences of these requirements, especially for violations arising after a valid filing for local office, but before the holding of the election or the swearing to office. In the alternative, the League recommends deletion of Subsection (b) of Section 19 and Section 53. Section 52(b), page 42; the League also respectfully requests deletion of Section 52(b) of HB-2454 as well as Section 60(b)page 50 is respectfully requested to be deleted from the bill. (Attachment 12)

Craig Grant, KNEA, told the committee he hoped the Senate would not make the same mistakes made in the House concerning HB-2454. He noted following 11 weeks of work including

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS,  
room 519-S, Statehouse, at 12:30 ~~am~~/p.m. on April 3, 1991

extensive subcommittee meetings, 12 amendments were made on the floor of the House with major changes in the bill and it was his belief that the final product was one that very few members of the House knew what they were voting on when they voted on final action. Mr. Kaup stated he hoped the senate committee as well as the full senate would look carefully at the action lest they create a monster that cannot be lived with. He further noted that even if some of the changes take until next year proper changes could be passed before the next election. Mr. Grant commented on eight separate sections of the bill which affect his organization. Attachment 13)

A member noted line 43 of New Section 24 (b) could cause numerous difficulties and was certainly concerned about such an issue.

A member noted he did not feel the House Committee knew what they were voting on and he was also convinced the House did not know what they were voting on. Mr. Grant noted it was his feeling the bill needed to be put into the process of correction even if it carried into the next session since the bill was so important and far reaching.

Mark Tallman, Coordinator of Governmental Relations, Kansas Association of School Boards, appeared noting the primary concern was new language in Section 6 which would bring candidates for the board of education under the provisions of the Campaign Finance Act. (Attachment 14)

In response to questioning Mr. Tallman stated it was his opinion vry few school board candidates spent more than \$500. He noted his real concern was that this was just another thing for volunteer candidates to do.

Harriet Lange, Executive Director, Kansas Association of Broadcasters, appeared before the committee noting concern with Section 51 of HB-2454. (Attachment 15) Ms. Lange noted few if any broadcast stations endorse or oppose candidates and it would be most difficult to determine the value of a broadcast editorial candidate endorsement. She also noted Section 51 raises a constitutional question as it relates to the First Amendment and a free and unrestrained press.

Ron Smith, Legislative Counsel, Kansas Bar Association, testified his organization opposed parts of HB 2342, which was HB-2454's predecessor as well as being opposed to parts of the original HB-2454. (Attachment 16) Mr. Smith told the committee that he wanted to know the intent of the legislature on issues, having issues dealt with by the legislature rather than dealing with them through rules and regulations by the Public Disclosure Commission.

The meeting adjourned at 2:25 p.m. and will meet April 4 at 12:30 p.m. in Room 519-S.

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE April 3, 1991 - 12:30 meeting -

(PLEASE PRINT)  
NAME AND ADDRESS

ORGANIZATION

NAME AND ADDRESS	ORGANIZATION
Michael Woolf Topeka	CC/KS
DAVID L. FERNAS Topeka	KPA
Jim Edwards Topeka	KECT
Harriet Langa "	KAB
Mike Reecht "	AT+T
JANET STUBBS "	HBAK
Trudy Aron "	Am Inst of Architects
Pam Somerville Topeka	KS Motor Car Dealers Assn
Rebecca Bossemeyer "	SOS
Jon Thornburgh "	"
Nick Roach "	DIVISION OF PURCHASES
Dean [unclear] "	" " "
Mark [unclear] "	KDOT
Clarence [unclear] "	"
Alan Coulter	KS Good Roads
Fran B. Pesci Sr. Washington D.C.	Pharmaceutical Manufacturers
Bill Henry Topeka	KS Engineering Society
George Barbee Topeka	KS Consulting Engineers
Jacquie Oates Topeka	SQE
Mark Tallman Topeka	KASR
Craig Grant Topeka	K-NEA
Stan Snyder Newton	KS Contractors Assoc.
Dan Rambow Topeka	" "
Bob Teller Topeka	KS Contractors Association
Edward R. Moses ✓	KS Ag Producers
STEVE KEARNEY ✓	PETERSON & ASSOCIATES

GUEST LIST

SENATE ELECTIONS COMMITTEE

DATE April 3, 1991

(PLEASE PRINT)

NAME AND ADDRESS

ORGANIZATION

Pete McGill Topeka

Pete McGill & Assoc

Tom Slattery Top

AGC of KS

Jim Kaup Topeka

League of Municipalities

Will Belden Topeka

LWVK

BARBARA PEINERT "

League of Women Voters

Joe Mygus Topeka

Dept of Administration



TOPEKA

HOUSE OF  
REPRESENTATIVES

ED McKECHNIE

REPRESENTATIVE, THIRD DISTRICT

224 W. JEFFERSON

PITTSBURG, KANSAS 66762

(316) 231-1669

ROOM 281-W

STATEHOUSE

TOPEKA, KS 66612

ASSISTANT MAJORITY WHIP

COMMITTEE ASSIGNMENTS

VICE CHAIRMAN: COMPUTERS, COMMUNICATION  
AND TECHNOLOGY

MEMBER: ELECTIONS  
ENERGY AND NATURAL RESOURCES  
TRANSPORTATION  
PENSIONS, INVESTMENTS AND  
BENEFITS

April 3, 1991

Testimony of Rep. Ed McKechnie  
To the Senate Elections Committee  
The Honorable Don Salle, Chairman

Thank you Mr. Chairman for allowing me the opportunity to appear before the Senate Committee on Elections today. I am here as a proponent of H.B. 2454, the House Omnibus Ethics Bill.

The bill is sweeping, bold and truly attempts to correct some of the concerns Kansans have. The bill was worked by three sub-committees of the House Elections Committee and received hours of attention by the full committee. The many, many questions that are before you in this bill are comprehensive and difficult in nature.

I do have two amendments to the bill which I believe need to be made.

The first is the removal of New Section 51. This section would require newspapers to report endorsements made in newspapers to the Kansas Governmental Ethics Commission. As a former reporter I can assure you this would place a chilling affect on the freedoms of speech and expressions guaranteed in the Federal Bill of Rights. I do not believe this section is constitutional or proper in form. In addition the language is vague and I believe would be difficult to enforce.

The second amendment is a balloon amendment dealing with the competitive bidding amendment that I offered as a compromise in committee. Our compromise necessitated a water color brush, instead we used a wall roller. The new language is attached.

I encourage the Committee to pass H.B. 2454 as amended favorable for passage.

Thank you Mr. Chairman and members of the Committee for your time. I would answer any questions you have at this time.

Senate Elections  
April 3, 1991  
Attachment 1

HOUSE BILL No. 2454

By Committee on Elections

2-25

11 AN ACT relating to public officers and employees; concerning  
12 governmental ethics and regulating and prohibiting certain activ-  
13 ities and practices; regulating [concerning] the financing of elec-  
14 tion campaigns and prohibiting certain activities and practices;  
15 [concerning gifts and contributions to political parties;] providing  
16 for the administration and enforcement of such regulations and  
17 prohibitions; defining certain crimes and imposing penalties;  
18 amending K.S.A. 25-4178, 46-215, 46-222, 46-225, [46-232,] 46-  
19 233, 46-234, 46-239, 46-243, 46-248, 46-253, 46-260, 46-268, 46-  
20 271 and 75-2953, 75-2953, ~~75-3739, 75-3741a, 75-4706, 75-4713~~  
21 ~~and 76-721~~] and K.S.A. 1990 Supp. 25-901, 25-4119a, 25-4119d,  
22 25-4142, 25-4143, 25-4144, 25-4145, ~~25-4148a, [25-4148a,]~~ 25-  
23 4152, 25-4153, 25-4153a, 25-4157a, 25-4158, 25-4161, 25-4180, 25-  
24 4181, 25-4182, 25-4183, 25-4184, 25-4185, 46-237, 46-247, 46-256,  
25 46-265, 46-269, 46-280, 46-288, 46-289, 46-290, 46-291, 46-292,  
26 74-7275 and 75-4303a, and repealing the existing sections; and also and 76-713  
27 repealing, ~~75-3741b, 75-37,102 and 75-4707~~ 76-745

28  
29 *Be it enacted by the Legislature of the State of Kansas:*

30 Sec. 1. K.S.A. 1990 Supp. 25-4119a is hereby amended to read  
31 as follows: 25-4119a. (a) The governmental ethics commission  
32 created by this section prior to the effective date of this act  
33 and in existence in March, 1981 is hereby abolished, and There  
34 is hereby created the Kansas public disclosure governmental ethics  
35 commission, which shall be the successor in every respect to  
36 the powers, duties and functions of the governmental ethics  
37 commission so abolished. The Kansas public disclosure com-  
38 mission shall consist of nine members of whom two shall be appointed  
39 by the governor, one by the president of the senate, one by the  
40 speaker of the house of representatives, one by the minority leader  
41 of the house of representatives, one by the minority leader of the  
senate, one by the chief justice of the supreme court, one by the  
attorney general and one by the secretary of state. The terms of

1. treasurer of the county to notify the appropriate authority of unpaid and delinquent  
2. property taxes.

3. (c) After approval or disapproval of tax clearance forms; the director of taxation  
4. and county treasurers of the several counties shall file such forms with the officer  
5. administering the oath or affirmation to the elective officer filing such request and  
6. to the officer appointing or employing the non-elected officer or employee filing such  
7. request.

8. ~~Sec. 54. K.S.A. 75-3739 is hereby amended to read as follows:~~  
9. ~~75-3739. In the manner as provided in this act and rules and~~

10. ~~regulations established thereunder:~~

11. ~~(a) All contracts for construction and repairs; and all purchases~~  
12. ~~of and contracts for supplies, materials, equipment and contractual~~  
13. ~~services to be acquired for state agencies shall be based on com-~~  
14. ~~petitive bids, except that competitive bids need not be required:~~

15. ~~(1) For contractual services when, in the judgment of the di-~~  
16. ~~rector of purchases, no competition exists; or (2) when, in the~~  
17. ~~judgment of the director of purchases, chemicals and other~~  
18. ~~material or equipment for use in laboratories or experimental~~  
19. ~~studies by state agencies are best purchased without compe-~~  
20. ~~titition, or where rates are fixed by law or ordinance; or (3) when,~~  
21. ~~in the judgment of the director of purchases, an agency emer-~~  
22. ~~gency requires immediate delivery of supplies, materials or~~  
23. ~~equipment, or immediate performance of services; or (4) when~~  
24. ~~any statute authorizes another procedure or provides an ex-~~  
25. ~~emption from the provisions of this section.~~

26. ~~The director of purchases shall make a detailed report at~~  
27. ~~least once in each calendar quarter to the legislative coordi-~~  
28. ~~nating council and the chairpersons of the senate committee~~  
29. ~~on ways and means and the house of representatives committee~~  
30. ~~on appropriations of all contracts for goods, supplies, materials,~~  
31. ~~equipment or contractual services entered into without com-~~  
32. ~~petitive bids under subsections (a)(1), (a)(2), (a)(3) or (g).~~

33. ~~(b) If the amount of the purchase is estimated to exceed ap-~~  
34. ~~proximately \$10,000, sealed bids shall be solicited by notice pub-~~  
35. ~~lished once in the Kansas register not less than 10 days before the~~  
36. ~~date stated therein for the opening of such bids. The director of~~  
37. ~~purchases may waive this publication of notice requirement when~~  
38. ~~the director determines that a more timely procurement is in the~~  
39. ~~best interest of the state. The director of purchases also may des-~~  
40. ~~ignate a trade journal for such publication. The director of pur-~~  
41. ~~chases also shall solicit such bids by sending notices by mail to~~  
42. ~~prospective bidders. All bids shall be sealed when received and~~  
43. ~~shall be opened in public at the hour stated in the notice. The~~



1 Director of purchases shall make a detailed report at least once in  
 2 each calendar quarter to the legislative coordinating council and  
 3 the chairpersons of the senate committee on ways and means and  
 4 the house of representatives committee on appropriations of all  
 5 cases when the publication of notice of bid solicitations in the Kansas  
 6 register have been waived under this subsection.

7 (c) All purchases estimated to exceed approximately \$5,000 but  
 8 not more than \$10,000, shall be made after receipt of sealed bids  
 9 following at least three days' notice posted on a public bulletin  
 10 board in the office of the director of purchases. The director of  
 11 purchases also may solicit sealed bids by mail in such cases in like  
 12 manner as provided in subsection (b).

13 (d) All purchases estimated to be less than \$5,000 may be made  
 14 after the receipt of three or more bid solicitations by telephone  
 15 and after receipt of sealed bids following at least three days' notice  
 16 posted on a public bulletin board in the office of the director of  
 17 purchases. Such bids shall be recorded as provided in subsection  
 18 (e) of K.S.A. 75-3740 and amendments thereto. With the approval  
 19 of the secretary of administration, the director of purchases may  
 20 delegate authority to any state agency to make purchases of  
 21 less than \$10,000 either on the open market or under certain  
 22 prescribed conditions and procedures. The director of pur-  
 23 chases shall make a report at least once in each calendar quarter  
 24 to the legislative coordinating council and the chairpersons of  
 25 the senate committee on ways and means and the house of  
 26 representatives committee on appropriations of all current and  
 27 existing delegations of authority under this subsection to state  
 28 agencies.

29 (e) Subject to the provisions of subsection (d), contracts and  
 30 purchases shall be based on specifications approved by the director  
 31 of purchases. When deemed applicable and feasible by the director  
 32 of purchases, such specifications shall include either energy effi-  
 33 ciency standards or appropriate life cycle cost formulas, or both,  
 34 for all supplies, materials, equipment and contractual services to  
 35 be purchased by the state. The director of purchases may reject  
 36 a contract or purchase on the basis that a product is manufactured  
 37 or assembled outside the United States. No such specifications shall  
 38 be fixed in a manner to effectively exclude any responsible bidder  
 39 offering comparable supplies, materials, equipment or contractual  
 40 services.

41 (f) Notwithstanding anything herein to the contrary, all contracts  
 42 with independent construction concerns for the construction, im-  
 43 provement, reconstruction and maintenance of the state highway

1 system and the acquisition of rights-of-way for state highway pur-  
2 poses shall be advertised and let as now or hereafter provided by  
3 law.

4 (g) The director of purchases may authorize state agencies  
5 to contract for services and materials with other state agencies,  
6 or with federal agencies, political subdivisions of Kansas, agen-  
7 cies of other states or subdivisions thereof, or private nonprofit  
8 educational institutions, without competitive bids.

9 (h) Except as otherwise specifically provided by law, no state  
10 agency shall enter into any lease of real property without the prior  
11 approval of the secretary of administration. Such state agency shall  
12 submit to the secretary of administration such information relating  
13 to any such proposed lease as the secretary may require. The  
14 secretary of administration shall either approve, modify and ap-  
15 prove or reject any such proposed lease.

16 Sec. 55. K.S.A. 75-3741a is hereby amended to read as follows:  
17 75-3741a. Each change order to a contract entered into under  
18 K.S.A. 75-3741, and amendments thereto, shall be related to an  
19 item or a matter that was included within the original program  
20 statement which was prepared and submitted with the capital im-  
21 provement budget estimate for the project under K.S.A. 75-3717b  
22 and amendments thereto. Each such change order may be nego-  
23 tiated with a contractor performing work under the original  
24 contract for the project unless the secretary of administration  
25 requires such change order to shall be let by competitive bids as  
26 a separate contract under K.S.A. 75-3739, and amendments thereto.

27 Sec. 56. K.S.A. 75-4706 is hereby amended to read as follows:  
28 75-4706. (a) No state agency, as defined in K.S.A. 75-3701 and  
29 amendments thereto, shall lease, cause to be leased, purchase,  
30 contract for, issue a letter of intent to contract for or cause to be  
31 installed, any data processing equipment, including auxiliary equip-  
32 ment or any data processing programs or systems, without the prior  
33 approval of the secretary of administration or specific legislative  
34 authorization. The director of accounts and reports shall not issue  
35 any warrant in payment for any lease or purchase contract for any  
36 data processing equipment, programs and systems acquired without  
37 such prior approval or authorization. All such contracts shall be  
38 subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive,  
3 and amendments thereto.

40 (b) All specifications for bids for acquisition of the data pro-  
41 cessing equipment, including auxiliary equipment and data pro-  
42 cessing programs and systems, shall be prepared by the director  
43 of information systems and communications, under the supervision

7/21/11 10:46 AM

1. treasurer of the county to notify the appropriate authority of unpaid and delinquent  
2. property taxes.

3. (e) After approval or disapproval of tax clearance forms, the director of taxation  
4. and county treasurers of the several counties shall file such forms with the officer  
5. administering the oath or affirmation to the elective officer filing such request and  
6. to the officer appointing or employing the non-elected officer or employee filing such  
7. request.

8. ~~Sec. 51. K.S.A. 75-3739 is hereby amended to read as follows:~~  
9. ~~75-3739. In the manner as provided in this act and rules and~~

10. ~~regulations established thereunder:~~  
11. ~~(a) All contracts for construction and repairs, and all purchases~~  
12. ~~of and contracts for supplies, materials, equipment and contractual~~  
13. ~~services to be acquired for state agencies shall be based on com-~~  
14. ~~petitive bids; except that competitive bids need not be required:~~  
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18. ~~material or equipment for use in laboratories or experimental~~  
19. ~~studies by state agencies are best purchased without compe-~~  
20. ~~tition; or where rates are fixed by law or ordinance; or (3) when,~~  
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23. ~~equipment; or immediate performance of services; or (4) when~~  
24. ~~any statute authorizes another procedure or provides an ex-~~  
25. ~~emption from the provisions of this section.~~

26. ~~The director of purchases shall make a detailed report at~~  
27. ~~least once in each calendar quarter to the legislative coordi-~~  
28. ~~nating council and the chairpersons of the senate committee~~  
29. ~~on ways and means and the house of representatives committee~~  
30. ~~on appropriations of all contracts for goods, supplies, materials,~~  
31. ~~equipment or contractual services entered into without com-~~  
32. ~~petitive bids under subsections (a)(1), (a)(2), (a)(3) or (g).~~

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1 director of purchases shall make a detailed report at least once in  
 2 each calendar quarter to the legislative coordinating council and  
 3 the chairpersons of the senate committee on ways and means and  
 4 the house of representatives committee on appropriations of all  
 5 cases when the publication of notice of bid solicitations in the Kansas  
 6 register have been waived under this subsection.

7 (c) All purchases estimated to exceed approximately \$5,000 but  
 8 not more than \$10,000, shall be made after receipt of sealed bids  
 9 following at least three days' notice posted on a public bulletin  
 10 board in the office of the director of purchases. The director of  
 11 purchases also may solicit sealed bids by mail in such cases in like  
 12 manner as provided in subsection (b).

13 (d) All purchases estimated to be less than \$5,000 may be made  
 14 after the receipt of three or more bid solicitations by telephone  
 15 and after receipt of sealed bids following at least three days' notice  
 16 posted on a public bulletin board in the office of the director of  
 17 purchases. Such bids shall be recorded as provided in subsection  
 18 (e) of K.S.A. 75-3740 and amendments thereto. With the approval  
 19 of the secretary of administration, the director of purchases may  
 20 delegate authority to any state agency to make purchases of  
 21 less than \$10,000 either on the open market or under certain  
 22 prescribed conditions and procedures. The director of pur-  
 23 chases shall make a report at least once in each calendar quarter  
 24 to the legislative coordinating council and the chairpersons of  
 25 the senate committee on ways and means and the house of  
 26 representatives committee on appropriations of all current and  
 27 existing delegations of authority under this subsection to state  
 28 agencies.

29 (e) Subject to the provisions of subsection (d), contracts and  
 30 purchases shall be based on specifications approved by the director  
 31 of purchases. When deemed applicable and feasible by the director  
 32 of purchases, such specifications shall include either energy effi-  
 33 ciency standards or appropriate life cycle cost formulas, or both,  
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 35 be purchased by the state. The director of purchases may reject  
 36 a contract or purchase on the basis that a product is manufactured  
 37 or assembled outside the United States. No such specifications shall  
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1 system and the acquisition of rights-of-way for state highway pur-  
 2 poses shall be advertised and let as now or hereafter provided by  
 3 law.

4 (g) The director of purchases may authorize state agencies  
 5 to contract for services and materials with other state agencies;  
 6 or with federal agencies, political subdivisions of Kansas, agen-  
 7 cies of other states or subdivisions thereof, or private nonprofit  
 8 educational institutions, without competitive bids.

9 (h) Except as otherwise specifically provided by law, no state  
 10 agency shall enter into any lease of real property without the prior  
 11 approval of the secretary of administration. Such state agency shall  
 12 submit to the secretary of administration such information relating  
 13 to any such proposed lease as the secretary may require. The  
 14 secretary of administration shall either approve, modify and ap-  
 15 prove or reject any such proposed lease.

16 Sec. 55. K.S.A. 75-3741a is hereby amended to read as follows:  
 17 75-3741a. Each change order to a contract entered into under  
 18 K.S.A. 75-3741, and amendments thereto, shall be related to an  
 19 item or a matter that was included within the original program  
 20 statement which was prepared and submitted with the capital im-  
 21 provement budget estimate for the project under K.S.A. 75-3717b  
 22 and amendments thereto. Each such change order may be nego-  
 23 tiated with a contractor performing work under the original  
 24 contract for the project unless the secretary of administration  
 25 requires such change order to shall be let by competitive bids as  
 26 a separate contract under K.S.A. 75-3739, and amendments thereto.

27 Sec. 56. K.S.A. 75-4706 is hereby amended to read as follows:  
 28 75-4706. (a) No state agency, as defined in K.S.A. 75-3701 and  
 29 amendments thereto, shall lease, cause to be leased, purchase,  
 30 contract for, issue a letter of intent to contract for or cause to be  
 31 installed, any data processing equipment, including auxiliary equip-  
 32 ment or any data processing programs or systems, without the prior  
 33 approval of the secretary of administration or specific legislative  
 34 authorization. The director of accounts and reports shall not issue  
 35 any warrant in payment for any lease or purchase contract for any  
 36 data processing equipment, programs and systems acquired without  
 37 such prior approval or authorization. All such contracts shall be  
 38 subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive,  
 39 and amendments thereto.

40 (b) All specifications for bids for acquisition of the data pro-  
 41 cessing equipment, including auxiliary equipment and data pro-  
 42 cessing programs and systems, shall be prepared by the director  
 43 of information systems and communications, under the supervision

of the secretary of administration. This subsection shall not apply to universities under the jurisdiction and control of the state board of regents or to the Kansas lottery.

~~Sec. 57. K.S.A. 75-4713 is hereby amended to read as follows: 75-4713. (a) The telecommunications negotiating committee is a three-person committee composed of (1) the secretary of administration; or a person designated by the secretary of administration; (2) the director of purchases; or a person designated by the director of purchases; and (3) the director of the division of information systems and communications; or a person appointed by the director of information systems and communications. The telecommunications negotiating committee may negotiate contracts for telecommunications services to be entered into by the secretary of administration for state agencies and other entities as provided in K.S.A. 75-4709 and amendments thereto.~~

~~(b) Prior to negotiating for telecommunications services, the committee shall advertise for sealed proposals. The committee then may negotiate with one or more firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing telecommunications services.~~

~~(c) Contracts entered into pursuant to this section act for telecommunications services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and amendments thereto.~~

~~Sec. 58. K.S.A. 76-721 is hereby amended to read as follows: 76-721. The board of regents, or any state educational institution with the approval of the board of regents, may enter into contracts with any party or parties including any agency of the United States or any state or any subdivision of any state or with any person, partnership or corporation if the purpose of such contract is related to the operation or function of such board or institution. All such contracts shall be based on competitive bids. If such contract is with a corporation whose operations are substantially controlled by the board or any state educational institution, such contract shall provide that the books and records of such corporation shall be public records and shall require an annual audit by an independent certified public accountant to be furnished to the board of regents and filed with the state agency in charge of post auditing state expenditures. All contracts of state educational institutions shall be subject to the provisions of K.S.A. 75-3711b and 75-3711d and amendments thereto.~~

[New Sec. 59. All bequests, legacies, devises or gifts to or for

1 the use of any political party committee as defined by subsection  
 2 (g) of K.S.A. 25-4143 and amendments thereto, whether an absolute  
 3 gift, or a gift of a remainder interest, from estates of decedents  
 4 dying after December 31, 1991, are hereby declared to be exempt  
 5 from tax under the provisions of the Kansas inheritance tax act.  
 6 Where the bequest, legacy, devise or gift is of a remainder interest,  
 7 the present value of such interest shall be determined under rules  
 8 and regulations to be promulgated by the director of revenue, and  
 9 the holder of the other beneficial interest in the property (unless  
 10 otherwise exempt) shall be taxable upon the value of the property  
 11 reduced by the present value of the remainder interest.]

12 [Sec. 60. K.S.A. 46-232 is hereby amended to read as follows:  
 13 46-232. (a) No state officer or employee shall engage in lobbying  
 14 his own state agency, if he accepts compensation specifically at-  
 15 tributable to such lobbying, other than that provided for the per-  
 16 formance of his official duties. Nothing in this section shall prohibit  
 17 a state officer or employee from lobbying without compensation  
 18 other than that which he is entitled to receive for performance of  
 19 his official duties.

20 [(b) No agency of the state or political or taxing subdivision  
 21 thereof funded in whole or in part by state funds shall expend any  
 22 funds for the purpose of employing a lobbyist.]

23 [Sec. 61. K.S.A. 1990 Supp. 25-4148a is hereby amended to  
 24 read as follows: 25-4148a. When a report is made under this act  
 25 and the amount being contributed by an individual is over \$50, the  
 26 report shall list the occupation, if known to the candidate, of the  
 27 individual contributor, or if the individual contributor is not em-  
 28 ployed for compensation then the report shall list the occupation,  
 29 if known to the candidate, of the contributor's spouse.]

30 Sec. 51 59 [62]. K.S.A. 25-4178, 46-215, 46-222, 46-225, [46-  
 31 232,] 46-233, 46-234, 46-239, 46-243, 46-248, 46-253, 46-260, 46-  
 32 268, 46-271 and 75-2953, 75-2953, 75-3739, 75-3741a, 75-3741b,  
 33 75-37,102, 75-4706, 75-4707, 75-4713 and 76-721 and K.S.A. 1990  
 34 Supp. 25-901, 25-4119a, 25-4119d, 25-4142, 25-4143, 25-4144, 25-  
 35 4145, 25-4148a, [25-4148a,] 25-4152, 25-4153, 25-4153a, 25-4157a,  
 36 25-4158, 25-4161, 25-4180, 25-4181, 25-4182, 25-4183, 25-4184, 25-  
 37 4185, 46-237, 46-247, 46-256, 46-265, 46-269, 46-280, 46-288, 46-  
 38 289, 46-290, 46-291, 46-292, 74-7275 and 75-4303a are hereby  
 39 repealed.

40 Sec. 52 60 [63]. This act shall take effect and be in force from  
 41 and after its publication in the statute book.

and 76-745

K.S.A. 1990 Supp. 76-713 is hereby amended to read as follows:

**76-713.** Lawsuits by or against board of regents, state educational institutions; representation by attorney general; exception. The board of regents may sue in its own name or in the name of any state educational institution, or may authorize suit to be brought by the chief executive officer of any state educational institution in the name of such state educational institution. The board of regents may be sued and may defend any action brought against the board of regents or any state educational institution. Any state educational institution may be sued and may defend any action brought against it. The attorney general, or an attorney designated by the attorney general, shall represent the board of regents and any state educational institution in all litigation, except that litigation arising pursuant to contracts for collection services entered into under K.S.A. ~~76-745~~ and amendments thereto shall not be subject to this requirement and the board of regents and any state educational institution shall be represented in any such litigation in accordance with such contracts entered into under K.S.A. ~~76-745~~ and amendments thereto. 75-37,102

History: L. 1970, ch. 371, § 3; L. 1977, ch. 237, § 26; L. 1990, ch. 338, § 1; July 1.



New.Sec. \_\_\_\_\_

All contracts entered into by state agencies for attorneys services shall be entered into pursuant to K.S.A. 75-37,102. The provisions of this section shall not be applicable to contracts not paid with state funds.

New.Sec. \_\_\_\_\_

All contracts entered into by state agencies for attorney services shall be entered into pursuant to K.S.A. 75-37,102. The provisions of this section shall not be applicable to contracts not paid with state funds.

For reference purposes only

**75-37,102. Procurement negotiating committees, services or technical products; composition; powers; notice and procedures; bidding and open meeting exemptions; reports to legislative coordinating council and committees.** (a) Upon request of the chief administrative officer of a state agency and subject to the approval of the secretary of administration, the director of purchases may convene a procurement negotiating committee to obtain services or technical products for the state agency.

(b) Each procurement negotiating committee shall be composed of: (1) The director of purchases; or a person designated by the director; (2) the chief administrative officer of the state agency desiring to make the procurement, or a person designated by the officer; and (3) the secretary of administration, or a person designated by the secretary.

(c) The negotiating committee is authorized to negotiate for the procuring state agency contracts with qualified parties to provide services or technical products needed by the state agency.

(d) Prior to negotiating for the procurement, a notice to bidders first shall be published in the Kansas register. Upon receipt of bids or proposals, the committee may negotiate with one or more of the firms submitting bids or proposals and select from among those submitting such bids or proposals the party to contract with to provide the services or technical products.

(e) Contracts entered into pursuant to this section shall not be subject to the provisions of K.S.A. 75-3738 through 75-3740a and amendments thereto. Meetings to conduct negotiations pursuant to this section shall not be subject to the provisions of K.S.A. 75-4317 through 75-4320a and amendments thereto. The director of purchases shall submit a report at least once in each calendar quarter to the legislative coordinating council and the chairpersons of the senate committee on ways and means and the house of representatives committee on appropriations of all contracts entered into pursuant to this section.

(f) Nothing in this section shall be construed as requiring either negotiations pursuant to this section or bids pursuant to K.S.A. 75-3739 and amendments thereto for the procurement of professional services or services for which, in the judgment of the director of purchases, meaningful specifications cannot be determined.

History: L. 1987, ch. 324, § 1; July 1.

Attorney General's Opinions:

Procurement negotiating committees, services or technical products; bidding exemption: 88-126.

KOMA; discussions regarding peer review and risk management reports; confidentiality and open meeting requirements: 89-42.

STATE OF KANSAS



KANSAS PUBLIC DISCLOSURE COMMISSION

109 W. NINTH  
TOPEKA, KANSAS 66612  
PHONE: (913) 296-4219

**Testimony before Senate Elections on House Bill 2454**

**By Carol E. Williams, Kansas Public Disclosure Commission**

The last time the Kansas Public Disclosure Commission met was on March 20, 1991. At that time HB 2454 was still in House Elections Committee. Therefore, the Commission has not had an opportunity to review the specific sections of the bill to determine the ramifications of the drafted language. As stated in its 1990 Annual Report and Recommendations, the Commission wholeheartedly endorsed conceptually the recommendations made by the Select Commission on Ethical Conduct. Many of those recommendations are contained in this bill.

I would like to specifically address four sections of HB 2454 since these were also recommendations made by the Kansas Public Disclosure Commission in its 1990 Annual Report and Recommendations.

The Commission urges your support of Section 1(d) which would set up a fee fund for the Kansas Public Disclosure Commission. The Commission would like to publish informational material in the areas of campaign finance and lobbying. Budgetary constraints prevent the agency from printing sufficient copies to satisfy the needs of the public. If the agency could sell these publications, the agency could print sufficient copies of its publications.

The Commission supports adoption of Section 13(a). Section 13(a) would prevent a candidate from using campaign funds for personal use. The Commission believes campaign funds should be used only for campaign purposes and not inure to the benefit of the candidate during or after a campaign. Attached is a list of actual expenditures reported by candidates running for state office during the 1988 election cycle.

Sections 14(d) and 36(b) deal with the issue of investigative subpoena power for the Kansas Public Disclosure Commission. The Commission recommends that it be empowered to issue subpoenas once an investigation is

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authorized in the area of campaign finance, conflict of interest or lobbying. Currently the Commission has two subpoena power options available to it: 1) The Commission can issue its own subpoena once a complaint has been filed and probable cause has been determined, and 2) with legislation enacted last year it can be obtained through judicial intervention, but then only when the Commission has found that there is information and belief that the Act has been violated. In neither case can the Commission conduct a proper investigation. The catch 22 situation occurs with both existing subpoena power options. Legislation enacted during the 1990 session provides that by a two thirds vote of its membership, the Commission, upon information and belief that a violation of the Campaign Finance Act or Governmental Ethics Laws has occurred, can make written application to the Administrative Judge of the District Court of Shawnee County for issuance of a subpoena. The problem with this method for obtaining a subpoena is the Commission must have information that a violation has occurred. There is no way to prove to the judge that a violation has occurred without documentary evidence to substantiate the allegation.

#### Example

A campaign finance report is filed showing 20 employees of a corporation all making the maximum contribution allowed by law to the same candidate. Further inquiry indicates that some of the individuals who made contributions were secretaries and clerks. A review of prior election reports indicate that none of these individuals had made contributions to any candidate in the past. Has the corporation funnelled campaign contributions through its employees? Based on this information, is there a sufficient basis for the judge to issue the Commission a subpoena? The answer is no, because the Commission does not have information and belief that a violation has occurred. Although it appears suspicious, these contributions could have been made legally. Without a subpoena to obtain corporate records, the question as to whether the 20 contributions were funnelled through employees cannot be answered.

The subpoena language in HB 2454 is taken from existing language for the Kansas Securities Commission.

Finally, Section 19(b) of this bill would prohibit any candidate from filing for office if he has an outstanding civil penalty or any unfiled

campaign finance reports. The Commission, in 1990 and in prior years, has been faced with occasions where an individual files for office who has not filed reports due in prior election years or owes the State money for prior assessed civil penalties. Once an individual files any past due reports or pays the state any past due fines, the Commission feels the individual should be allowed to seek office. The Commission supports adoption of Section 19(b).

ACTUAL REPORTED CAMPAIGN EXPENDITURES  
BY KANSAS CANDIDATES

175 meals for birthday party (\$735)  
Christmas cards & presents (\$350)  
Thanksgiving cards & mailing (\$1,650)  
KU basketball season tickets (\$458)  
consulting fee for hazardous waste (\$300)  
yard service (\$1,527)  
press Christmas party & misc. parties (\$498)  
purchased peacock at fair (\$100)  
photo session for Christmas cards (\$1,982)  
paid fee to take bar exam (\$502)  
liquor for Christmas party (\$844)  
purchased livestock from 4-H for advertising (\$180)  
staff & press Christmas parties (\$550)  
sponsored basketball team (\$300)  
liquor for holiday open house (\$545)  
oil change, lube, & repairs to car (\$708)  
framing items from national party convention (\$228)  
paid hospital bills (\$2,709)  
Christmas postage (\$1,000)  
reimbursed candidate for mileage expense (\$4,000)  
gifts for China trip (\$79)  
35mm camera (\$230)  
postage for Thanksgiving cards (\$1,255)  
gave out-of-state PAC money to charity (\$100)  
prints of Maureen Reagan reception (\$260)  
hearing aid repair (\$75)  
food & flowers for Secretaries Day (\$39)  
paid wife as campaign worker (\$300)  
Kansas books & cloth sunflower for trip to foreign country (\$120)  
repair campaign car & buy tires (\$1,288)  
gifts for foreign government (\$23)  
purchased 4-H animal (\$851)  
make-up, professional fees (\$650)  
process 2 hogs (\$116)  
flowers for receptions, open house, inaugural & Kansas Day (\$768)  
purchased 4-H animal (\$375)  
pictures at Christmas party, inaugural & KS Day & reprints (\$430)  
turned remaining funds over to candidate (\$359)  
The Toy Store (items for fundraiser) (\$848)  
fair premiums over three year period (\$2,516)  
liquor store over 3 year period (\$5,770)  
purchased 1 sheep (\$178)  
1 staff member's travel over 3 year period (\$13,156)  
paid country club dues and fees (\$4,886)  
golf & tournament prizes & fundraiser at country club over 3 year period (\$14,649)  
food, lodging and entertainment over two year period (\$8,445)



**COMMON CAUSE / KANSAS**

701 Jackson, Room B-6 • Topeka, Kansas 66603 • (913) 235-3022

April 3, 1991

**TESTIMONY IN SUPPORT OF HOUSE BILL 2454  
TO THE SENATE ELECTIONS COMMITTEE  
BY MICHAEL WOOLF, EXECUTIVE DIRECTOR**

Thank you Mr. Chairman, members of the Committee for allowing me to testify in support of many of the provisions in House Bill 2454.

**SUBPOENA POWER**

The first issue I would like to address is full investigative subpoena power for the Commission, which is located in sections 14 and 36.

Without question, this is the most important reform that the legislature can make in the enforcement of our ethics laws. In the past I have talked with this Committee about the current Catch-22 situation which requires the Commission to show that probable cause exists before they can subpoena the information they need to show probable cause.

I have also discussed the fact that other state regulatory agencies have this type of investigative subpoena power. Not just agencies like the Barber Board and the Mortuary Board, but also the Securities Commissioner, Lottery Commission, Racing Commission, Corporation Commission and others.

There has been a great deal of concern about the Commission starting politically motivated "witch hunts" or rumors and "whisper campaigns" to hurt someone's political career if they are granted subpoena power. But to be quite honest, the Commission doesn't need a subpoena to ruin someone's political career. They have had the ability to conduct "witch hunts" and start rumors for 17 years, with a variety of directors and a variety of Commissioners, and it hasn't happened.

In addition, why would the Commission risk conducting a witch hunt? If they did they would risk losing their appointment, their budget and their subpoena power in the next legislative session.

This issue has been discussed time and time again, and one cannot help but be suspicious of a legislature that continues to keep its ethics commission weak. Legislators and others say that in comparison, Kansas politics is pretty clean. Then why are we so scared of a strong commission?

I would also like to voice concern over the requirement that a subpoena must be "authorized by the affirmative vote of not less than 3/4 of the members of the Commission". This would require the

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affirmative vote of 7 of the 9 Commissioners regardless of how many are present at the meeting. This is an overly burdensome requirement imposed solely on the agency that is the government watchdog and it should be removed.

#### DIRECT CORPORATION AND UNION CONTRIBUTION BAN

Section 12(b) prohibits corporations, partnerships, trusts, organizations and associations from contributing directly to candidates.

These contributions are involuntarily contributed by consumers and union members. People have no choice but to make these contributions: they are included in the price of the products you buy and the union dues you may pay.

In addition, an individual with a controlling interest in one or more corporations can give the maximum contribution individually and again on behalf of each corporation he or she controls.

Corporate and union contributions have been banned by many other states as well as for federal candidates and Kansas should also adopt such a policy.

#### OTHER CAMPAIGN FINANCE REFORMS

Common Cause also supports several other campaign finance reform measures that are included in the bill:

1. Section 61 which requires that the occupation of contributors be listed. The current law contains a huge loophole which is eliminated by the bill.
2. Section 6(n) which includes school district candidates under the Campaign Finance Act. Many School Board candidates spend as much on their campaigns as candidates for the House, and current law does not require them to disclose that information until after the election. For candidates who spend less than \$500, they would be able to file a 1 page exemption.
3. Section 13(a) which improves the personal use of campaign funds prohibition. While this is an improvement it still contains a major loophole which should be eliminated. It states that campaign funds can be used for "expenses of holding political office". This would still allow expenditures for clothing, food, travel, furniture, rent or anything remotely related to a legislator being in Topeka.
4. Section 13(b) prohibits the transfer of campaign funds from one candidate to another. This is a loophole that can be used to get around the contribution limits, and we agree that it should be eliminated.



## CONFLICT OF INTEREST REFORMS

Common Cause also supports several conflict of interest reforms that are in the bill:

1. Section 32(g) which requires consultants to file Statements of Substantial Interest (SSI).
2. Section 33 which requires the filer of an SSI to indicate the percentage of ownership the filer has in a particular business. We also support the recommendation of the Select Commission that a filer should indicate any business interest from which the filer receives more than 10% of his or her income. This is not currently in the bill but it was included in SB 347.
3. Section 29 and others that reduce the limit on the value of gifts that people with a special interest in state government can give to public officials from \$100 to \$20.

## AMENDMENTS TO HB 2454

There are three provisions that were included in earlier versions of House Bill 2454 which Common Cause would like to see reinstated in the bill:

1. Deleted Section 11(j) on page 12 would have set up an aggregate PAC limit that would have prevented a candidate from accepting more money from PACs than from individual citizens. This would prevent a candidate from relying solely on special interest groups for campaign money. This proposal does not go as far as many legislators want, but it does prevent heavy reliance on special interest group money. It also does not cause the problems and inequalities that are associated with a total PAC ban. This concept has been around for several years and it may be a compromise whose time has come.
2. Deleted Section 39 on page 35 should also be reinserted into the bill. As written this section would have required full public disclosure of all money spent by special interest lobbying groups to influence legislation. The most controversial requirement was the disclosure of "salaries, fees, retainers, and any other compensation received for the performance of services as a lobbyist". This is the most important and influential lobbying expenditure that a special interest group can make. This expenditure makes it possible for special interest groups to have a direct line to public officials. It allows them to be present every day, talking with the public officials, trying to persuade legislators to vote a certain way and providing them with information and testimony.

Compensation also allows lobbyists to work with the press and request that your constituents contact you on specific issues. All of these things are certainly as influential as buying legislators dinner and drinks.

Because of our belief in total public disclosure, Common Cause reports its entire budget in the lobbying expenditure report. The public is able to look at our report and see that Common Cause/Kansas spent \$36,069.56 in 1990 to influence legislation. Under current law, however, we are not required to report anything. That suggests to the public that we did not spend any money to lobby--and that simply is not true.

3. Deleted part of Section 30(a) on page 26 which would have banned legislators from appearing before a state agency on behalf of a private interest for compensation. This is a direct conflict of interest since state agencies rely on these same legislators for their budget, salaries, programs etc.

Mr. Chairman, in closing there are a number of more minor provisions in the bill which Common Cause supports that I have not discussed today. There are also several provisions in 2454 that we take no position on. But if the Committee passes these 12 specific proposals they will have passed major campaign finance and ethics reform this session.

# THE KANSAS CONTRACTORS ASSOCIATION, INC.



## OFFICERS

STAN SCUDDER, President  
Newton, Kansas

DON POPEJOY, Vice President  
Ulysses, Kansas

TOM RITCHIE, Treasurer  
Wichita, Kansas

## STAFF

DANIEL W. RAMLOW, Executive Director  
ROBERT E. TOTTEN, Public Affairs Director

316 S.W. 33 RD ST. P.O. BOX 5061  
TOPEKA, KANSAS 66605-5061  
PHONE (913) 266-4152  
FAX (913) 266-6191

## DIRECTORS

DICK BROWN  
Salina, Kansas  
W. CHARLES GAGNON  
Salina, Kansas  
R. H. KISTNER  
Marysville, Kansas  
BILL KLAVER, JR.  
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TESTIMONY  
BY THE  
KANSAS CONTRACTORS ASSOCIATION  
Before the Senate Elections Committee  
Regarding House Bill 2454  
April 3, 1991

Mr. Chairman and members of the Senate Elections Committee. Thank you for the opportunity to appear before you today to provide additional comments on House Bill 2454.

My name is Stan Scudder. I am president of the Kansas Contractors Association. Our association represents over 330 heavy, highway and municipal-utility contractor and associate member firms in the Kansas construction industry.

The association appears before you this afternoon in opposition to House Bill 2454. One of our concerns appears on page 24 regarding section 28. In this section, the bill prohibits state officers and employees who are directly responsible for contracts with private firms from working for that same firm for two years after severing ties with the state. This language could be interpreted to apply to all KDOT engineering employees and would include all construction firms that bid KDOT projects, in essence the entire Kansas highway construction industry.

This restraint of employment is unfair to potential as well as present employees of many of our state departments, including the Department of Transportation.

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DOT has many competent employees and to restrain them from accepting the opportunity to further advance their careers by limiting their places of employment is unfair. DOT is presently able to hire young engineers straight out of Kansas University and Kansas State University. There are several reasons DOT hires these new graduates. They are well qualified and with their limited experience they are the least expensive to hire. However, with this restraint placed on these graduates, it will make it more difficult for DOT to employ them. In many cases, these graduates work for DOT for a short three to five year period in an effort to get experience and then go to work in the Kansas construction industry. By placing this prohibition on them, many of these young engineers will seek work outside the state.

Not only does this hurt the state of Kansas directly, but it hurts the state indirectly since many potentially good employees and taxpayers would be faced with the prospect of leaving Kansas to find other jobs. One of the goals in our state is to retain qualified people. With this bill, we could possibly see Kansas further the "braindrain" syndrome by encouraging our young engineers to work out of state.

In addition, this could cost the state more money in the long run by requiring additional compensation for our newly hired engineers since they would be giving up some of their rights to work for the state.

In both instances the state loses. For these two basic concerns we oppose House Bill 2454. I appreciate the opportunity to appear before you this afternoon and I would be willing to answer any of your questions.

# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

HB 2454

April 3, 1991

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the  
Senate Elections Committee

by

Jim Edwards  
Director, Chamber and Association Relations

Mr. Chairman and members of the Committee:

I am Jim Edwards, Director of Chamber and Association Relations for KCCI, and I appreciate the opportunity to appear before you today to provide input on HB 2454.

Because this bill is so broad in its scope we have not taken a position on the bill as a whole, but will focus on what we feel are the areas of strength and weakness of the bill.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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In our system of representative government, there are several keys to enhance its effectiveness. **First**, there should be a free flow of information between those being governed and those who govern. **Second**, the maximizing of political participation by constituents should be encouraged. **Last**, but not least, there needs to be an effective and efficient method of reporting and monitoring the political activities of all.

The legislature should do all it can to encourage the presentation of information on all issues by all individuals and groups. We urge caution in restricting any group from providing input on issues no matter how their lobbying efforts are funded. We recognize that fees for lobbyists can be constructed to reflect the political activity levels but, at the same time, in no way should be onerous. The "fee agency" concept is not distasteful to KCCI.

KCCI believes that all groups and individuals should be encouraged to participate in elections by either working for a candidate or contributing funds. While HB 2454 would still permit contributions to PACs, it would prohibit the direct campaign contributions of unions and businesses. This restriction makes little sense if the bottom line is increased participation by all.

The legislature should be very cautious when determining what needs to be reported. The reporting of office overhead would give little information on the lobbying done by any group or association and would be extremely difficult to determine. What is gained by knowing how much it cost to prepare testimony for you or to send newsletters containing legislative information to our members? We don't know about other groups, but would imagine that they are like us in that no one has time to compile reports that serve no other value than to be "good copy for a slow news day."

Finally, KCCI believes that for the Kansas Public Disclosure Commission to be more effective in carrying out the rules and regulations it is responsible for, it should be provided with the necessary tools. While some look at the issue of full investigative subpoena powers and say that it provides the agency with too much power, we look at it and say that we would much rather have an investigation take place with a subpoena and

have it be private rather than be investigated under the current system and have it be a media sideshow.

Just as the legislature should encourage political and legislative participation, it should also provide for a sound, yet reasonable system of reporting activities. We must remember that no amount of legislation will stop someone from circumventing the law that wants to do so. Yet, excess legislation can, and will hamper the efforts of those who have, and will continue to abide by current laws and statutes.

Thank you for your consideration and I would be happy to stand for questions.



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**KSAE POSITION ON ISSUES ADDRESSED BY  
KANSAS SELECT COMMISSION ON ETHICAL CONDUCT**


1. **SUPPORT** changes which would include in the definition of hospitality such events as golf, tennis or other social events at which the lobbyist is present. (These events are now considered to be "gifts").
2. **SUPPORT** provisions which would give the Kansas Public Disclosure Commission full investigative subpoena powers.
3. **OPPOSE** efforts which would restrict organizations, unions, corporations and PACs from making direct candidate contributions, while allowing contributions to party PACs or political parties.
4. **SUPPORT** the extension of lobbying statutes and rules and regulations to the members of the executive branch and all state officers. (Currently some individuals who lobby are not required to conform to statutes and rules and regulations).
5. **SUPPORT** efforts which would provide meaningful lobbying expenditure reports without requiring duplicative or unnecessary information such as salaries, office overhead, travel, preparation of proposals and position papers, and general communications.





TO: Members of the House Elections Committee

February 27, 1991

FROM: Harriet Lange  
President 

RE: Ethics Reform

The Kansas Society of Association Executives (KSAE) is a not-for-profit professional society whose membership consists of 160 professional members who represent 100 different trade, professional, philanthropic and advocacy organizations; 65 associate members who represent suppliers to associations; and 55 legislative agents not "on staff" of an association, but who represent clients before the legislature.

KSAE's primary purposes are to develop and encourage high standards of service and conduct for association executives (see attached "Standards of Conduct"), to increase public understanding of associations and their economic importance, to promote the common interests of association executives, and to promote the accomplishments of voluntary associations.

KSAE's Public Affairs Committee Chairman Jim Edwards has presented to you KSAE's positions on ethics reform. We appreciate your consideration.

The purpose of this memo is to acquaint you with associations in general, most being not-for-profit and guided by elected volunteer boards of directors who develop and establish policies and positions for their respective associations.

You are familiar with many of our professional members who manage not-for-profit associations, simply because they also represent their members before the legislature. Collectively, they represent the same constituency that each of you represents. The majority of Kansans belong to one or more associations or organizations, many of whom provide member representation before this legislature.

One of the fundamental functions of many associations is to provide a unified voice on legislation and regulations affecting a particular industry or profession. You, as lawmakers, rely on associations for information and hopefully recognize that intelligent decisions involving complex issues require input from a variety of associations and cause-oriented groups.

For most associations, political education consists of educating their members about proposed legislation and informing lawmakers about its impact. And political education consists not only of influencing pending legislation, but also of explaining new regulations and guidelines to their members.

Associations exist to serve common needs of their members, and in the process, help government officials write and carry out sound laws and policies. And associations advance the political process in other ways. They frequently encourage their "grass-roots" members to discuss public issues with their elected officials, thereby strengthening responsible representation and democracy.

Political activity, however, is only one of the services provided by associations to their members. A recent survey conducted by the American Society of Association Executives found that the average association spends less than ten percent of its expenditures on political activity. Associations also make substantial economic contributions and foster product and professional standards, ethical codes, community service, research, and education.

It is our hope that as you consider ethics reform, you will keep in mind the valuable contribution that associations make, not only to the legislative process, but also to society in general.

**KANSAS SOCIETY OF ASSOCIATION EXECUTIVES**

4301 Huntoon, Suite 9 • Topeka, Kansas 66604 • (913) 272-0083

# KANSAS SOCIETY OF ASSOCIATION EXECUTIVES

## *Standards of Conduct*

As a member of KSAE, I pledge to:

*Maintain the highest standard of personal conduct.*

*Promote and encourage the highest level of ethics within the industry or profession my association represents.*

*Maintain loyalty to the association that employs me, and pursue its objectives in ways that are consistent with the public interest.*

*Recognize and discharge my responsibility and that of my association to uphold all laws and regulations relating to my association's policies and activities.*

*Strive for excellence in all aspects of management of my association.*

*Use only legal and ethical means in all association activities and in influencing legislation or regulation.*

*Comply with all state and federal statutes governing lobbying and political activities.*

*Serve all members of my association impartially, provide no special privilege to any individual member, and accept no personal compensation from a member except with the knowledge and consent of my association's governing board.*

*Maintain the confidentiality of privileged information entrusted or known to me by virtue of my office.*

*Refuse to engage in, or countenance, activities for personal gain at the expense of my association or its industry or profession.*

*Always communicate association internal and external statements in a truthful and accurate manner.*

*Cooperate in every reasonable and proper way with other association executives, and work with them in the advancement of the profession of association management.*

*Use every opportunity to improve public understanding of the role of associations.*

This Code of Standards of Conduct for members of the Kansas Society of Association Executives has been adopted to promote and maintain the highest standards of association service and personal conduct among its members, and serves to assure public confidence in the integrity and service of association executives.

**Kansas Press Association**  
**Inc.**

5423 S.W. 7th St., Topeka, KS 66606 (913) 271-5304, Fax (913) 271-7341

Testimony of  
Kansas Press Association  
before  
Senate Elections Committee  
on HB 2454  
April 3, 1991

Mr. Chairman and members of the committee: My name is David Furnas and I am the executive director of the Kansas Press Association, an organization representing the more than 250 newspapers in Kansas.

Although appearing during that portion of the hearing for proponents, I can say that the Press Association does not have an official position on House Bill 2454. Our organization is diverse and there are many opinions on all or portions of the bill. However, our organization clearly opposes Section 51 of the bill -- that portion dealing with the requirement for the media to report editorial endorsements.

Of course, our organization and our industry strongly oppose the intent of Section 51 on philosophical grounds as it would relate to fire amendment issues, but I would like to suggest to the committee the many technical problems with that section.

The bill does not define what a newspaper or other media outlet might be. For example, are specialty publications of organizations such as trade publications or union newspapers included in the definition of newspapers? Are publications which editorialize about Kansas candidates or issues, but are legally located in other states, covered by this bill? The Kansas City Star, for example, or even the broadcast media along the Kansas borders might escape the definition of this bill.

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If it were not difficult enough to define a newspaper, it certainly is very difficult to define an editorial endorsement. Would that be only editorials on the editorial page? Perhaps columns? Or maybe letters to the editor?

Even the content of an editorial might come into question. We have all read editorials which didn't clearly endorse a candidate, but the inference could be an endorsement. Even members of the committee have joked about what is generally called the "kiss of death" by a newspaper editorial where the editorial endorsement is perceived to do more harm than good. What about the editorial which speaks to a strongly held issue by a candidate? What about the editorial which quite frankly says both candidates deserve consideration?

Unfortunately, the publisher or chief executive officer must submit a report on these editorials or face statutory penalties. It is very clear that such legislation could have a chilling effect on an editor's choice of editorials.

There is serious question whether any newspaper publisher would submit such a report anyway. Although the bill suggests the space of the editorial should be converted to the equivalent advertising rate, there is no comparable rate for the editorial page of a newspaper. That space just isn't for sale. Even at that, how much of an editorial should be reported? Would the newspaper also be subject to campaign contribution limitations? If so, that too, raises some constitutional questions.

At the staff briefing, the question was raised if Section 51 was a serious and well-studied amendment. Most newspaper publishers have dismissed this amendment as a frivolous "shot" at the media by some members of the Legislature. Others see this amendment as an attempt to influence the support for the entire bill.

Representing the Press Association, I must consider Section 51 as a serious amendment. On behalf of our membership, I ask the committee to amend the bill by deleting Section 51 in the committee report and to provide the leadership to oppose any attempt to restore that amendment on the floor or in a conference committee.

Thank you.



# AIA Kansas

A Chapter of The American Institute of Architects



April 3, 1991



TO: Members of the Senate Elections Committee

FROM: Trudy Aron

RE: **OPPOSITION TO HOUSE BILL 2454**

1991 Executive Committee

Eugene Kremer, FAIA  
President • Manhattan  
KSU Liaison

Peter Gierer, AIA  
President-Elect • Topeka

Steven A. Scannell, AIA  
Secretary • Topeka

John H. Brewer, AIA  
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Donnie D. Marrs, AIA  
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Gerald R. Carter, AIA  
Director • Topeka

Shannon Ferguson-Bohm, AIA  
Director • Wichita

Richard A. Backes, AIA  
Director • Wichita

K. Vance Kelley, AIA  
Director • Topeka

Ronald E. Frey, AIA  
Director • Manhattan

Edward M. Koser, AIA  
Past-President • Wichita

Renè Diaz, AIA  
KU Liaison • Lawrence

Trudy Aron  
Executive Director

Mr. Chairman and Members of the Committee, I am Trudy Aron, Executive Director of the American Institute of Architects in Kansas. I am here today to express our opposition to Sections 54 and 55 of HB 2454 (pages 46-48).

Section 54 would require all contracts for architectural services to be based on competitive bid. The current policy as defined in statute (75-1250) states: "The legislature hereby declares it to be the policy of this state to announce publicly all requirements for architectural services, and to negotiate contracts for architectural services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices." Our current statutes do just that.

The design of a building is unlike the purchase of a commodity. The state cannot compare two or more buildings and decide which they like best and buy it. Therefore, the State must be certain that the team hired to design the project has the necessary experience, staff and time to perform the services required for the project. It is impossible to evaluate these qualities in a competitive bid situation.

The design and engineering costs are generally a very small percentage of the total construction costs. A careful and detailed negotiation will bring out the most cost-effective requirements for a successful project through consideration of research for the best type of design, or alternative methods and materials, of life-cycle cost factors and the cost of operation and maintenance. It is a poor trade-off to save on the design work when this may increase costs elsewhere.

In addition, skimping on the design efforts can be even more costly when one considers the life span of a construction project. The life span of a building project is about 40 years. Negotiated planning/design fees are usually less than one percent of a project's total life-cycle cost. Construction costs range from seven to ten percent of a project's total life-cycle cost. The other 90 percent is in maintenance and operating costs. The consultant's expertise and time spent in examining alternatives, like energy use, can have a dramatic effect on lowering maintenance and operating costs year after year.

Kansas, like most states and the federal government, require the selection of architects and engineers on the basis of qualifications. The American Institute of Architects funded an independent study between the selection procedures for two states in 1985. Those states, Maryland which had a procurement procedure based on competitive bidding and Florida which had a procurement procedure, like Kansas, based on qualifications and negotiation. The results of this study clearly showed that not only did Florida receive better quality buildings, but that the overall costs were

700 SW Jackson, Suite 209  
Topeka, Kansas 66603-3731  
Telephone: 913-357-5308  
800-444-9853  
Facsimile: 913-357-6450

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lower than those in Maryland. Since that study, Maryland has adopted a qualifications-based selection process. I have given a copy of this study to your staff.

Our current procurement procedure requires the State Building Advisory Commission to give the Negotiating Committee a list of 3-5 firms who are qualified to do the work. The Negotiating Committee is very knowledgeable about construction costs and has a good idea about the complexity of the design, the need for additional consultants, etc. The members of the Negotiating Committee have the background and experience to make sure the state has the necessary design expertise for the project at a fair price. Remember, we also have a mandated fee schedule within which the Negotiating Committee is allowed to negotiate. This fee schedule gives the Committee the ability to adjust, within that fee, the amount paid on a project by project basis:

Requiring competitive bids for architectural and engineering services is being penny wise and pound foolish. Any amount saved initially would nearly always be spent later in additional construction, maintenance and/or operating costs.

Our second concern is Section 55 which requires competitive bids as separate contracts on change orders. I want to read the quotes from two of my members.

From a Manhattan architect: "One additional area of the Ethics Bill which will reek havoc on the construction industry has to do with taking bids on change orders for a construction project that already has a contractor and numerous subcontractors under contract. A bid package of plans and specifications will have to be prepared (at additional expense for architectural services) to fully explain what the on-site contractor already knows. It will, in effect, bring in a new party to perform a very small portion of the work, but having affect on other portions. Who will take final responsibility? Furthermore, on most change orders, time is of the essence. To take bids could literally take weeks or months. It is possible the entire job could be shut down, costing thousands of dollars in delays, merely to await the receipt of a bid for a few hundred dollars worth of work. It is preposterous."

A Topeka architect said, "Once a contractor has been awarded a contract to build a building, it is his responsibility to stand behind the work he produces. Once another contractor is awarded a contract to perform changes in that work, while the original contractor is still on the job, it will be impossible to determine where each's responsibility begins and ends. The additional administrative work required by both the state, the insurance companies and the professional design team would be enormous with end results disastrous to all parties concerned."

Our procurement procedures in these two areas are working well. To institute such drastic changes with such little public input would be to invite catastrophe. We urge you to strike Sections 54 and 55 in HB 2454. I'll be happy to answer any questions you may have.

Presented to Senate Elections Committee

Department of Administration Testimony on H.B. 2454

April 4, 1991

The amended version of H.B. 2454 contains certain provisions that this Department must oppose and other provisions for which we would seek clarification. The intent of the bill as it pertains to our operation appears to be in concert with our own objectives. However, we have reservations about the practical effect of its enactment.

#### EMERGENCY PURCHASES [Pg. 46, Section 54 (a)]

This section deletes the authority of the Director of Purchases to exempt emergency purchases from the competitive bid process. We believe this authority is critical; hospitals and SRS institutions must be able to react immediately to facilities breakdowns. Corrections and the Department of Transportation are equally susceptible to the need to act in response to emergencies. You may recall a gas pipeline explosion just south of Topeka a few years ago; KDOT had to move immediately on road repairs. An air conditioning failure at the Medical Center last year required emergency acquisition of repair to the MRI unit. The emergency purchases provision of the statutes was also used last year to restore electrical service to Topeka State Hospital. In none of these cases was it feasible to begin a 30 to 60 day process of acquiring competitive bids to address the situation.

#### LOCAL DELEGATION AUTHORITY [Pg. 45, Section 54(d)]

This portion strikes language that allows the Director of Purchases to delegate authority to agencies for purchases up to \$10,000. At this time, four agencies have the maximum \$10,000 authority: KU, KUMC, WSU and KDOT. We estimate that these four agencies have dedicated at least fifteen positions to this task. Numerous other agencies have authority to purchase supplies (up to \$2,000) and equipment (up to \$500). Agencies with delegated authority are still required to competitively bid any acquisition over \$500. Elimination of the ability to delegate this authority will place a burden on the Division of Purchases which it cannot meet with current staff. We believe that local delegation authority should be retained. If this authority is revoked, the staff of the Division of Purchases will probably need to be doubled, at a cost of almost \$1.4 million, to accept this additional workload.

#### NEGOTIATED PROCUREMENTS [Pg. 50, Section 62]

The repealer section of this bill deletes the authorization for negotiated procurements. Under this process, requests for proposals are both advertised in the Kansas Register

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and sent to all known vendors. Responses are evaluated in the same manner as they are under the competitive bidding process. Rarely have awards been made to other than the lowest bidder, but frequently the final award is based on a price that is less than initial bids.

Statutes enabling negotiated procurements were enacted during the 1987 Session. The ability to negotiate helps the vendor understand the scope of agency needs and gives vendors the opportunity to point out strengths or unique features of their products or service capability. The ability to negotiate has also been helpful in contracts for services and contracts for highly technical equipment where meaningful specifications are difficult. It also provides vendors the opportunity to assess State needs and propose alternative solutions that may not have been considered, and do so in a competitive environment.

Experience has shown benefits in areas that we had not foreseen. Attached are memoranda from Division of Purchases staff describing some examples. One of the things you will see in this correspondence is the leverage the State has acquired through negotiation and the savings we have been able to achieve. The ability to negotiate has also proven valuable in areas where there is little or no competition: it gives us the ability to negotiate a lower price with a single bidder rather than accepting the only offer.

One particularly good example of the value of this statute relates to the Division of Purchases' effort, in 1988, to seek competitive pricing for natural gas. Little expertise existed within the Division as to how we best obtain these services. The negotiation process not only allowed the State to realize savings of 20-30 percent, but it also gave our staff sufficient expertise in the area that we now obtain this commodity through the competitive sealed bid process.

#### CHANGE ORDERS [Pg. 48, Section 55]

This section repeals the Department's authority to negotiate with contractors on construction projects for needed changes in work that are discovered as the construction is in progress. We are not prepared to argue that bidding each change would not save dollars; it might or might not result in direct savings. It is doubtful that any real savings would occur if you take into account the delays, confusion and coordination problems that can result if each change is subjected to a 30 to 60 day competitive bid process and having to cope with multiple contractors on the job. Prison construction, where meeting deadlines is essential, is a good example of the problems that can be created by delay. Statutory safeguards are already in place in this area, requiring approval by the Secretary of Administration, reporting to the Joint Committee on State Building Construction on all changes and prior consultation with the Joint Committee on any changes exceeding \$25,000.



## CONTRACTS WITH OTHER AGENCIES [Pg. 48, Section 54 (g)]

The cited provision deletes current authority of the Director of Purchases to approve contracts between state agencies, with federal agencies, with local units of government or private nonprofit entities. Our objection to this authority being eliminated is primarily based on what we perceive to be a needless increase in costs, paperwork, and time in those instances when it is clear that the competitive bid process serves no real purpose. One example might be the contract between the Norton Correctional Facility and the Norton School District to provide educational services to inmates. We believe the Department of Corrections would have received no competition in response to a solicitation of bids.

## SOLE SOURCE [Pg. 46, Section 54(a)]

Eliminating the ability of the Director of Purchases to declare that no competition exists for a particular good or service presents the same problem as eliminating the ability to contract with other agencies as described above. The State Library, for example, contracts with the American Library Association for access to a national electronic library network; it is the only provider of this service and the bidding process is not a worthwhile endeavor. The University Of Kansas Medical Center acquired a kidney transplant drug through sole source procurement in January from the only pharmaceutical company that manufactures that drug. Again, nothing is to be gained by going through the bidding process. Still another example is an agency purchase of a document feeder that attached to a photocopier that had been previously purchased. The manufacturer of the photocopier was the only one that could provide the document feeder. While it can be done, we question the advisability of going through the competitive bidding process when there is clear evidence that no competition exists.

## TAX CLEARANCE FOR EMPLOYEES [Pg. 43, Section 53(b)]

We support the concept of requiring state income tax and property tax payment as a condition of hiring a state job applicant. This requirement will result in delays in filling positions. To avoid delays in hiring we recommend an amendment that would allow conditional appointment to a position contingent upon clearance within a specified time period. It is recommended that lack of response from the tax clearing entities within 30 days be viewed as a positive clearance.

We assume that responsibility for compliance with the requirement would fall to the individual agencies and that the language is intended to apply only to new employees. If that is not the Legislature's intent, we ask that more specific language be incorporated into the bill.

## SUMMARY

H. B. 2454 eliminates provisions in the state purchasing laws that we believe are important, and in some cases crucial, to state operations. Attached is a balloon version of amendments we advocate to the current bill.

HOUSE BILL No. 2454

By Committee on Elections

2-25

11 AN ACT relating to public officers and employees; concerning  
12 governmental ethics and regulating and prohibiting certain activ-  
13 ities and practices; regulating [concerning] the financing of elec-  
14 tion campaigns and prohibiting certain activities and practices;  
15 [concerning gifts and contributions to political parties;] providing  
16 for the administration and enforcement of such regulations and  
17 prohibitions; defining certain crimes and imposing penalties;  
18 amending K.S.A. 25-4178, 46-215, 46-222, 46-225, [46-232,] 46-  
19 233, 46-234, 46-239, 46-243, 46-248, 46-253, 46-260, 46-268, 46-  
20 271 and 75-2953, 75-2953, [75-3739, 75-3741a, 75-4706, 75-4713  
21 and 76-721] and K.S.A. 1990 Supp. 25-901, 25-4119a, 25-4119a,  
22 25-4142, 25-4143, 25-4144, 25-4145, 25-4148a, [25-4148a,] 25-  
23 4152, 25-4153, 25-4153a, 25-4157a, 25-4158, 25-4161, 25-4180, 25-  
24 4181, 25-4182, 25-4183, 25-4184, 25-4185, 46-237, 46-247, 46-256,  
25 46-265, 46-269, 46-280, 46-288, 46-289, 46-290, 46-291, 46-292,  
26 74-7275 and 75-4303a and repealing the existing sections; and also  
27 repealing [75-3741b, 75-37102 and 75-4707].  
28

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

30 Sec. 1. K.S.A. 1990 Supp. 25-4119a is hereby amended to read  
31 as follows: 25-4119a. (a) The governmental ethics commission  
32 created by this section prior to the effective date of this act  
33 and in existence in March, 1981 is hereby abolished, and There  
34 is hereby created the Kansas public disclosure *governmental ethics*  
35 commission, which shall be the successor in every respect to  
36 the powers, duties and functions of the governmental ethics  
37 commission so abolished. The Kansas public disclosure com-  
38 mission shall consist of nine members of whom two shall be appointed  
39 by the governor, one by the president of the senate, one by the  
40 speaker of the house of representatives, one by the minority leader  
41 of the house of representatives, one by the minority leader of the  
senate, one by the chief justice of the supreme court, one by the  
attorney general and one by the secretary of state. The terms of

1 (b) From and after July 1, 1991, all nonelected officers and  
 2 employees of the state of Kansas, before entering upon the duties  
 3 of their office or employment, shall file a Kansas income tax clear-  
 4 ance request with the division of taxation of the department of  
 5 revenue of the state and a property tax clearance request with the  
 6 county treasurer of each county in which such officer or employee  
 7 owns property. Such requests shall be filed for the purposes and  
 8 in the manner prescribed in this section. No such officer or em-  
 9 ployee shall be appointed or employed by any agency of the state  
 10 of Kansas to any position for which any compensation is paid under  
 11 the laws of the state of Kansas, without first having received the  
 12 tax clearance approval of the director of taxation and the property  
 13 tax clearance approval of the county treasurer or treasurers in  
 14 accordance with this section.

permanently

15 (c) Forms for the making of Kansas income tax clearance re-  
 16 quests shall be prescribed and provided by the secretary of revenue  
 17 and shall be in substantially the following form:

Such officers and employees may be conditionally employed pending tax clearance approval of the director of taxation and the county treasurer or treasurers. If a disapproval on an income or property tax clearance request is not received in writing within 30 days of the conditional appointment, the clearance request shall be deemed approved.

KANSAS INCOME TAX CLEARANCE REQUEST

20 (Please Print)

21 NAME: \_\_\_\_\_ SOC SEC NUMBER: \_\_\_\_\_  
 22 (Last) (First) (M.I.)  
 23 CURRENT \_\_\_\_\_  
 24 ADDRESS: \_\_\_\_\_ SPOUSES NAME: \_\_\_\_\_  
 25 (No. and Street)  
 26 CURRENT SPOUSES \_\_\_\_\_  
 27 \_\_\_\_\_ SOC SEC NUMBER: \_\_\_\_\_  
 28 (City) (State) (Zip Code)  
 29 (Furnishing Social Security \_\_\_\_\_  
 30 TELEPHONE: \_\_\_\_\_ Number is voluntary. However,  
 31 Where you can be reached providing the number will  
 32 8:00 a.m. to 5:00 p.m. assure an accurate check.)  
 33 \_\_\_\_\_

34 NOTE: If any of the following tax year(s) were filed jointly with someone other  
 35 than your current spouse, please list the name, social security number, and  
 36 tax year(s) filed with that individual in the space provided:

37 NAME: \_\_\_\_\_ SOC SEC NUMBER: \_\_\_\_\_ TAX YEAR(S): \_\_\_\_\_

38 Have you any due and unpaid or delinquent income taxes (under the Kansas income  
 39 tax act) for the following years?

40 If "yes," please explain in detail for each year.

41 Read the instructions on the back of this form.

42 Yes No Additional space is available on the back.

1. treasurer of the county to notify the appropriate authority of unpaid and delinquent  
 2. property taxes.  
 3. (c) After approval or disapproval of tax clearance forms; the director of taxation  
 4. and county treasurers of the several counties shall file such forms with the officer  
 5. administering the oath or affirmation to the elective officer filing such request and  
 6. to the officer appointing or employing the non-elected officer or employee filing such  
 7. request.

8. ~~Sec. 54. K.S.A. 75-3739 is hereby amended to read as follows:~~  
 9. ~~75-3739. In the manner as provided in this act and rules and~~  
 10. ~~regulations established thereunder:~~

11. ~~(a) All contracts for construction and repairs; and all purchases~~  
 12. ~~of and contracts for supplies, materials, equipment and contractual~~  
 13. ~~services to be acquired for state agencies shall be based on com-~~  
 14. ~~petitive bids; except that competitive bids need not be required:~~  
 15. ~~(1) For contractual services when, in the judgment of the di-~~  
 16. ~~rector of purchases, no competition exists; or (2) when, in the~~  
 17. ~~judgment of the director of purchases, chemicals and other~~  
 18. ~~material or equipment for use in laboratories or experimental~~  
 19. ~~studies by state agencies are best purchased without compe-~~  
 20. ~~tition; or where rates are fixed by law or ordinance; or (3) when,~~  
 21. ~~in the judgment of the director of purchases, an agency emer-~~  
 22. ~~gency requires immediate delivery of supplies, materials or~~  
 23. ~~equipment; or immediate performance of services; or (4) when~~  
 24. ~~any statute authorizes another procedure or provides an ex-~~  
 25. ~~emption from the provisions of this section.~~

26. ~~The director of purchases shall make a detailed report at~~  
 27. ~~least once in each calendar quarter to the legislative coordi-~~  
 28. ~~nating council and the chairpersons of the senate committee~~  
 29. ~~on ways and means and the house of representatives committee~~  
 30. ~~on appropriations of all contracts for goods, supplies, materials,~~  
 31. ~~equipment or contractual services entered into without com-~~  
 32. ~~petitive bids under subsections (a)(1), (a)(2), (a)(3) or (g).~~

33. ~~(b) If the amount of the purchase is estimated to exceed ap-~~  
 34. ~~proximately \$10,000, sealed bids shall be solicited by notice pub-~~  
 35. ~~lished once in the Kansas register not less than 10 days before the~~  
 36. ~~date stated therein for the opening of such bids. The director of~~  
 37. ~~purchases may waive this publication of notice requirement when~~  
 38. ~~the director determines that a more timely procurement is in the~~  
 39. ~~best interest of the state. The director of purchases also may des-~~  
 40. ~~ignate a trade journal for such publication. The director of pur-~~  
 41. ~~chases also shall solicit such bids by sending notices by mail to~~  
 42. ~~prospective bidders. All bids shall be sealed when received and~~

1 director of purchases shall make a detailed report at least once in  
 2 each calendar quarter to the legislative coordinating council and  
 3 the chairpersons of the senate committee on ways and means and  
 4 the house of representatives committee on appropriations of all  
 5 cases when the publication of notice of bid solicitations in the Kansas  
 6 register have been waived under this subsection.

7 (c) All purchases estimated to exceed approximately \$5,000 but  
 8 not more than \$10,000, shall be made after receipt of sealed bids  
 9 following at least three days' notice posted on a public bulletin  
 10 board in the office of the director of purchases. The director of  
 11 purchases also may solicit sealed bids by mail in such cases in like  
 12 manner as provided in subsection (b).

13 (d) All purchases estimated to be less than \$5,000 may be made  
 14 after the receipt of three or more bid solicitations by telephone  
 15 and after receipt of sealed bids following at least three days' notice  
 16 posted on a public bulletin board in the office of the director of  
 17 purchases. Such bids shall be recorded as provided in subsection  
 18 (e) of K.S.A. 75-3740 and amendments thereto. With the approval  
 19 of the secretary of administration, the director of purchases may  
 20 delegate authority to any state agency to make purchases of  
 21 less than \$10,000 either on the open market or under certain  
 22 prescribed conditions and procedures. The director of pur-  
 23 chases shall make a report at least once in each calendar quarter  
 24 to the legislative coordinating council and the chairpersons of  
 25 the senate committee on ways and means and the house of  
 26 representatives committee on appropriations of all current and  
 27 existing delegations of authority under this subsection to state  
 28 agencies.

29 (e) Subject to the provisions of subsection (d), Contracts and  
 30 purchases shall be based on specifications approved by the director  
 31 of purchases. When deemed applicable and feasible by the director  
 32 of purchases, such specifications shall include either energy effi-  
 33 ciency standards or appropriate life cycle cost formulas, or both,  
 34 for all supplies, materials, equipment and contractual services to  
 35 be purchased by the state. The director of purchases may reject  
 36 a contract or purchase on the basis that a product is manufactured  
 37 or assembled outside the United States. No such specifications shall  
 38 be fixed in a manner to effectively exclude any responsible bidder  
 39 offering comparable supplies, materials, equipment or contractual  
 40 services.

41 (f) Notwithstanding anything herein to the contrary, all contracts  
 42 with independent construction concerns for the construction, im-  
 43 provement, reconstruction and maintenance of the state highway

1 system and the acquisition of rights-of-way for state highway pur-  
2 poses shall be advertised and let as now or hereafter provided by  
3 law.

4 (g) The director of purchases may authorize state agencies  
5 to contract for services and materials with other state agencies,  
6 or with federal agencies, political subdivisions of Kansas, agen-  
7 cies of other states or subdivisions thereof, or private nonprofit  
8 educational institutions, without competitive bids.

9 (h) Except as otherwise specifically provided by law, no state  
10 agency shall enter into any lease of real property without the prior  
11 approval of the secretary of administration. Such state agency shall  
12 submit to the secretary of administration such information relating  
13 to any such proposed lease as the secretary may require. The  
14 secretary of administration shall either approve, modify and ap-  
15 prove or reject any such proposed lease.

16 Sec. 55. K.S.A. 75-3741a is hereby amended to read as follows:  
17 75-3741a. Each change order to a contract entered into under  
18 K.S.A. 75-3741, and amendments thereto, shall be related to an  
19 item or a matter that was included within the original program  
20 statement which was prepared and submitted with the capital im-  
21 provement budget estimate for the project under K.S.A. 75-3717b  
22 and amendments thereto. Each such change order may be nego-  
23 tiated with a contractor performing work under the original  
24 contract for the project unless the secretary of administration  
25 requires such change order to *shall* be let by competitive bids as  
26 a separate contract under K.S.A. 75-3739, and amendments thereto.

27 Sec. 56. K.S.A. 75-4706 is hereby amended to read as follows:  
28 75-4706. (a) No state agency, as defined in K.S.A. 75-3701 and  
29 amendments thereto, shall lease, cause to be leased, purchase,  
30 contract for, issue a letter of intent to contract for or cause to be  
31 installed, any data processing equipment, including auxiliary equip-  
32 ment or any data processing programs or systems, without the prior  
33 approval of the secretary of administration or specific legislative  
34 authorization. The director of accounts and reports shall not issue  
35 any warrant in payment for any lease or purchase contract for any  
36 data processing equipment, programs and systems acquired without  
37 such prior approval or authorization. *All such contracts shall be*  
38 *subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive,*  
39 *and amendments thereto.*

40 (b) All specifications for bids for acquisition of the data pro-  
41 cessing equipment, including auxiliary equipment and data pro-  
42 cessing programs and systems, shall be prepared by the director  
43 of information systems and communications, under the supervision

1. treasurer of the county to notify the appropriate authority of unpaid and delinquent  
2. property taxes.

3. (o) After approval or disapproval of tax clearance forms; the director of taxation  
4. and county treasurers of the several counties shall file such forms with the officer  
5. administering the oath or affirmation to the elective officer filing such request and  
6. to the officer appointing or employing the non-elected officer or employee filing such  
7. request.

8. ~~Sec. 54. K.S.A. 75-3739 is hereby amended to read as follows:~~  
9. 75-3739. In the manner as provided in this act and rules and

10. regulations established thereunder:  
11. (a) All contracts for construction and repairs; and all purchases  
12. of and contracts for supplies, materials, equipment and contractual  
13. services to be acquired for state agencies shall be based on com-  
14. petitive bids; except that competitive bids need not be required:  
15. (1) For contractual services when, in the judgment of the di-  
16. rector of purchases, no competition exists; or (2) when, in the  
17. judgment of the director of purchases, chemicals and other  
18. material or equipment for use in laboratories or experimental  
19. studies by state agencies are best purchased without compe-  
20. tition; or where rates are fixed by law or ordinance; or (3) when,  
21. in the judgment of the director of purchases, an agency emer-  
22. gency requires immediate delivery of supplies, materials or  
23. equipment; or immediate performance of services; or (4) when  
24. any statute authorizes another procedure or provides an ex-  
25. emption from the provisions of this section.

26. The director of purchases shall make a detailed report at  
27. least once in each calendar quarter to the legislative coordi-  
28. nating council and the chairpersons of the senate committee  
29. on ways and means and the house of representatives committee  
30. on appropriations of all contracts for goods, supplies, materials,  
31. equipment or contractual services entered into without com-  
32. petitive bids under subsections (a)(1), (a)(2), (a)(3) or (g).

33. (b) If the amount of the purchase is estimated to exceed ap-  
34. proximately \$10,000, sealed bids shall be solicited by notice pub-  
35. lished once in the Kansas register not less than 10 days before the  
36. date stated therein for the opening of such bids. The director of  
37. purchases may waive this publication of notice requirement when  
38. the director determines that a more timely procurement is in the  
39. best interest of the state. The director of purchases also may des-  
40. ignate a trade journal for such publication. The director of pur-  
41. chases also shall solicit such bids by sending notices by mail to  
42. prospective bidders. All bids shall be sealed when received and



1 Director of purchases shall make a detailed report at least once in  
 2 each calendar quarter to the legislative coordinating council and  
 3 the chairpersons of the senate committee on ways and means and  
 4 the house of representatives committee on appropriations of all  
 5 cases when the publication of notice of bid solicitations in the Kansas  
 6 register have been waived under this subsection.

7 (c) All purchases estimated to exceed approximately \$5,000 but  
 8 not more than \$10,000, shall be made after receipt of sealed bids  
 9 following at least three days' notice posted on a public bulletin  
 10 board in the office of the director of purchases. The director of  
 11 purchases also may solicit sealed bids by mail in such cases in like  
 12 manner as provided in subsection (b).

13 (d) All purchases estimated to be less than \$5,000 may be made  
 14 after the receipt of three or more bid solicitations by telephone  
 15 and after receipt of sealed bids following at least three days' notice  
 16 posted on a public bulletin board in the office of the director of  
 17 purchases. Such bids shall be recorded as provided in subsection  
 18 (c) of K.S.A. 75-3740 and amendments thereto. With the approval  
 19 of the secretary of administration, the director of purchases may  
 20 delegate authority to any state agency to make purchases of  
 21 less than \$10,000 either on the open market or under certain  
 22 prescribed conditions and procedures. The director of pur-  
 23 chases shall make a report at least once in each calendar quarter  
 24 to the legislative coordinating council and the chairpersons of  
 25 the senate committee on ways and means and the house of  
 26 representatives committee on appropriations of all current and  
 27 existing delegations of authority under this subsection to state  
 28 agencies.

29 (e) Subject to the provisions of subsection (d), contracts and  
 30 purchases shall be based on specifications approved by the director  
 31 of purchases. When deemed applicable and feasible by the director  
 32 of purchases, such specifications shall include either energy effi-  
 33 ciency standards or appropriate life cycle cost formulas, or both,  
 34 for all supplies, materials, equipment and contractual services to  
 35 be purchased by the state. The director of purchases may reject  
 36 a contract or purchase on the basis that a product is manufactured  
 37 or assembled outside the United States. No such specifications shall  
 38 be fixed in a manner to effectively exclude any responsible bidder  
 39 offering comparable supplies, materials, equipment or contractual  
 40 services.

41 (f) Notwithstanding anything herein to the contrary, all contracts  
 42 with independent construction concerns for the construction, im-  
 43 provement, reconstruction and maintenance of the state highway

1 system and the acquisition of rights-of-way for state highway pur-  
 2 poses shall be advertised and let as now or hereafter provided by  
 3 law.

4 (g) The director of purchases may authorize state agencies  
 5 to contract for services and materials with other state agencies,  
 6 or with federal agencies, political subdivisions of Kansas, agen-  
 7 cies of other states or subdivisions thereof, or private nonprofit  
 8 educational institutions, without competitive bids.

9 (h) Except as otherwise specifically provided by law, no state  
 10 agency shall enter into any lease of real property without the prior  
 11 approval of the secretary of administration. Such state agency shall  
 12 submit to the secretary of administration such information relating  
 13 to any such proposed lease as the secretary may require. The  
 14 secretary of administration shall either approve, modify and ap-  
 15 prove or reject any such proposed lease.

16 Sec. 55. K.S.A. 75-3741a is hereby amended to read as follows:  
 17 75-3741a. Each change order to a contract entered into under  
 18 K.S.A. 75-3741, and amendments thereto, shall be related to an  
 19 item or a matter that was included within the original program  
 20 statement which was prepared and submitted with the capital im-  
 21 provement budget estimate for the project under K.S.A. 75-3717b  
 22 and amendments thereto. Each such change order may be nego-  
 23 tiated with a contractor performing work under the original  
 24 contract for the project unless the secretary of administration  
 25 requires such change order to shall be let by competitive bids as  
 26 a separate contract under K.S.A. 75-3739, and amendments thereto.

27 Sec. 56. K.S.A. 75-4706 is hereby amended to read as follows:  
 28 75-4706. (a) No state agency, as defined in K.S.A. 75-3701 and  
 29 amendments thereto, shall lease, cause to be leased, purchase,  
 30 contract for, issue a letter of intent to contract for or cause to be  
 31 installed, any data processing equipment, including auxiliary equip-  
 32 ment or any data processing programs or systems, without the prior  
 33 approval of the secretary of administration or specific legislative  
 34 authorization. The director of accounts and reports shall not issue  
 35 any warrant in payment for any lease or purchase contract for any  
 36 data processing equipment, programs and systems acquired without  
 37 such prior approval or authorization. All such contracts shall be  
 38 subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive,  
 39 and amendments thereto.

40 (b) All specifications for bids for acquisition of the data pro-  
 41 cessing equipment, including auxiliary equipment and data pro-  
 42 cessing programs and systems, shall be prepared by the director  
 43 of information systems and communications under the supervision

of the secretary of administration. This subsection shall not apply to universities under the jurisdiction and control of the state board of regents or to the Kansas lottery.

~~Sec. 57. K.S.A. 75-4713 is hereby amended to read as follows: 75-4713. (a) The telecommunications negotiating committee is a three-person committee composed of (1) the secretary of administration, or a person designated by the secretary of administration; (2) the director of purchases, or a person designated by the director of purchases; and (3) the director of the division of information systems and communications, or a person appointed by the director of information systems and communications. The telecommunications negotiating committee may negotiate contracts for telecommunications services to be entered into by the secretary of administration for state agencies and other entities as provided in K.S.A. 75-4709 and amendments thereto.~~

~~(b) Prior to negotiating for telecommunications services, the committee shall advertise for sealed proposals. The committee then may negotiate with one or more firms submitting proposals and select from among those submitting such proposals the party to contract with for the purpose of providing telecommunications services.~~

~~(c) Contracts entered into pursuant to this section act for telecommunications services shall not be subject to the provisions of K.S.A. 75-3738 to 75-3740a, inclusive, and amendments thereto.~~

~~Sec. 58. K.S.A. 76-721 is hereby amended to read as follows: 76-721. The board of regents, or any state educational institution with the approval of the board of regents, may enter into contracts with any party or parties including any agency of the United States or any state or any subdivision of any state or with any person, partnership or corporation if the purpose of such contract is related to the operation or function of such board or institution. All such contracts shall be based on competitive bids. If such contract is with a corporation whose operations are substantially controlled by the board or any state educational institution, such contract shall provide that the books and records of such corporation shall be public records and shall require an annual audit by an independent certified public accountant to be furnished to the board of regents and filed with the state agency in charge of post auditing state expenditures. All contracts of state educational institutions shall be subject to the provisions of K.S.A. 75-3711b and 75-3711d and amendments thereto.~~

(New Sec. 59. All bequests, legacies, devises or gifts to or for

1 the use of any political party committee as defined by subsection  
2 (g) of K.S.A. 25-4143 and amendments thereto, whether an absolute  
3 gift, or a gift of a remainder interest, from estates of decedents  
4 dying after December 31, 1991, are hereby declared to be exempt  
5 from tax under the provisions of the Kansas inheritance tax act.  
6 Where the bequest, legacy, devise or gift is of a remainder interest,  
7 the present value of such interest shall be determined under rules  
8 and regulations to be promulgated by the director of revenue, and  
9 the holder of the other beneficial interest in the property (unless  
10 otherwise exempt) shall be taxable upon the value of the property  
11 reduced by the present value of the remainder interest.]

12 [Sec. 60. K.S.A. 46-232 is hereby amended to read as follows:  
13 46-232. (a) No state officer or employee shall engage in lobbying  
14 his own state agency, if he accepts compensation specifically at-  
15 tributable to such lobbying, other than that provided for the per-  
16 formance of his official duties. Nothing in this section shall prohibit  
17 a state officer or employee from lobbying without compensation  
18 other than that which he is entitled to receive for performance of  
19 his official duties.

20 [(b) No agency of the state or political or taxing subdivision  
21 thereof funded in whole or in part by state funds shall expend any  
22 funds for the purpose of employing a lobbyist.]

23 [Sec. 61. K.S.A. 1990 Supp. 25-4148a is hereby amended to  
24 read as follows: 25-4148a. When a report is made under this act  
25 and the amount being contributed by an individual is over \$50, the  
26 report shall list the occupation, if known to the candidate, of the  
27 individual contributor, or if the individual contributor is not em-  
28 ployed for compensation then the report shall list the occupation,  
29 if known to the candidate, of the contributor's spouse.]

30 Sec. 51-59 [62]. K.S.A. 25-4178, 46-215, 46-222, 46-225, [46-  
31 232,] 46-233, 46-234, 46-239, 46-243, 46-248, 46-253, 46-260, 46-  
32 268, 46-271 and 75-2953, 75-2953, [75-3739, 75-3741a, 75-3741b,  
33 75-37102, 75-4706, 75-4707, 75-4713 and 76-721] and K.S.A. 1990  
34 Supp. 25-901, 25-4119a, 25-4119d, 25-4142, 25-4143, 25-4144, 25-  
35 4145, 25-4148a, [25-4148a,] 25-4152, 25-4153, 25-4153a, 25-4157a,  
36 25-4158, 25-4161, 25-4180, 25-4181, 25-4182, 25-4183, 25-4184, 25-  
7 4185, 46-237, 46-247, 46-256, 46-265, 46-269, 46-280, 46-288, 46-  
8 289, 46-290, 46-291, 46-292, 74-7275 and 75-4303a are hereby  
39 repealed.

40 Sec. 52 60 [63]. This act shall take effect and be in force from  
41 and after its publication in the statute book.

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION  
Division of Purchases

JOAN FINNEY,  
Governor  
NICHOLAS B. ROACH,  
Director of Purchases

Landon State Office Building  
900 Jackson, Room 102 N  
Topeka, Kansas 66612-1286  
(913) 296-2376

M E M O R A N D U M

TO: Nicholas B. Roach, Director of Purchases  
FROM: Fran Welch <sup>D</sup> Division of Purchases  
DATE: April 1, 1991  
RE: Negotiated Procurements

As requested, following are comments relative to savings to the State which have been made possible as a result of negotiating pursuant to K.S.A. 75-37,102.

While I have not maintained a record of every negotiated procurement processed over my desk, attached is a copy of correspondence generated June 15, 1989 which reports savings of \$1,283,088, attributable to nine contracts. Included in that group is Contract 26135, Hospital Utilization Review Services, Department of Social and Rehabilitation Services. The savings generated through negotiations, without change in scope of services, were particularly satisfying because we had only one bidder.

Another satisfying contract negotiation, for me, was Contract 28236, Publishing Hunting and Fishing Regulations, Department of Wildlife and Parks. The initial charge was to be \$38,900 and we negotiated \$0 cost to the state. This was a situation where the contractor was to sell advertising space in the publication to pay publication costs. It's my understanding he did a great job on the publication, but may not have sold enough advertising to cover the first year costs. Because this is a three year contract, the contractor is expected to recover due to increased advertising sales in the next two years.

Sometimes savings, as well as other benefits, occur as a result of negotiating terms and conditions which differ from the original specification. A recent example is Contract 28305, Comprehensive Health Care Services, Department of Corrections. By reducing the limit of liability required for insurance, reducing the amount of performance bond required and making minor personnel changes, a savings of \$312,000 to the state while not compromising services was possible.

Another benefit accrued to the State during this negotiation was that Corrections was able to add two additional facilities to the contract. None of these changes could have occurred without benefit of the ability to negotiate.

For the contracts I handle, I feel 10% savings in best and final offers, over initial quotes, would be an average. Several examples follow which are representative of many of the smaller negotiations where savings are less but not insignificant from a percentage standpoint.

Department of Commerce, Contract 69839  
Technical Services for Target Industries  
Initial Bid: \$40,000  
Best & Final: \$31,000

Department of Commerce, Contract 74747  
Coal Utilization Study  
Initial Bid: \$45,000  
Best & Final: \$40,900

Kansas State Fair, Contract 28023  
Revenue Enhancement Study  
Initial Bid: \$57,000  
Best & Final: \$37,500

Kansas Technical Institute, Contract 80710  
Needs Assessment of Kansas Technical Institute  
Initial Bid: \$27,460  
Best & Final: \$24,100

Department of Transportation, Contract 74351  
Internal Control Review  
Initial Bid: \$26,200  
Best & Final: \$23,580

Kansas Veterans, Contract 28185  
Needs Assessment of Aging  
Initial Bid: \$20,000  
Best & Final: \$17,500

M E M O R A N D U M

TO: Nicholas B. Roach, Director of Purchases  
FROM: Fran Welch, State Contracting Officer  
DATE: June 15, 1989  
RE: Negotiated Procurements

Barry and I have just completed a busy several weeks with negotiated procurements.

While we only processed nine contracts, awards totaled \$12,206,368, with best and final offers being \$1,283,088 under what the successful vendor originally bid.

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION  
Division of Purchases

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Topeka, Kansas 66612-1286  
(913) 296-2376

MEMORANDUM

To: Nicholas B. Roach,  
Director of Purchases

From: Barry K. Swanson,  
State Contracting Officer *[Signature]*

Date: April 1, 1991

Subject: Negotiated Procurements

This memo is in response to your recent request regarding the above referenced subject.

Due to the length of time required to compile a summation of all negotiated procurements which I have handled to date, I have instead chosen three procurements which I felt best demonstrate the on-going utility of the negotiated procurement statute (KSA 75-37, 102).

Probably the best example of how this statute can be utilized in the State's best interest is Habilitative Therapy Service Contract #27757. This contract was negotiated for Winfield State Hospital in January, 1988.

The genesis of this project was a sole source request by the agency to obtain these services for a total three year fee of 4 million dollars. This office disapproved the request, drafted a Request for Proposal and solicited over thirty vendors to seek competition. Competition was realized when two vendors submitted responses. Both vendors were brought in for negotiating sessions with the end result being the vendor located by this office being awarded the contract for a fee substantially less than the original sole source request. The agency also had a higher comfort level with this vendor than the one they originally desired.



The original proposal by the successful vendor contained a three year fee of \$4,301,483. The ultimate award was for \$2,436,780. Approximately \$800,000 of the savings was due to changes in the scope of work with the balance being cost reductions achieved by utilizing the negotiation process.

Another example is the Comprehensive Study of Asbestos Related Materials in Buildings at Kansas State University. This project was originally estimated by Kansas State University to cost \$190,000. Proposals were submitted and negotiations were held with several firms. The original low cost proposal was for \$69,000. During negotiations it was discovered the low bid had overlooked several items and their bid was thus changed to \$80,000. The awarded vendor's original bid was \$84,605. The eventual not to exceed contract total was \$76,552. This represented a fine tuning of several specification requirements as well as direct cost savings (\$3,605) through negotiations.

Finally, this office began to seek competitive pricing for natural gas in 1988. Little if any expertise existed in the beginning regarding how to best obtain these services. As such, the negotiated procurement process was utilized to solicit proposals and negotiations were held to obtain contracts which were in the State's best interest. This process resulted in contracts being obtained for several agencies with cost savings of 20-30 percent. In addition, the negotiations allowed the state personnel involved to develop a level of expertise with the gas industry and participating vendors which now allow these projects to be handled as competitive sealed bids.

I hope this information is helpful. If more detail is required, please let me know.

STATE OF KANSAS



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MEMORANDUM

**DATE:** Monday, April 1, 1991  
**TO:** Nick Roach  
**FROM:** J. Carey Brown, EDP Policy Analyst *JCB*  
**RE:** Negotiated Procurements

The following successes of this approach are worth retelling:

**Law Enforcement Switch (#63721 for KBI)**

This was one of the earliest negotiated procurements, and like the later AFIS procurement, without negotiating ability, we probably wouldn't have been able to address the problems that occurred with late installation and system changes. The vendor completed delivery more than 18 months late, and lost large sums of money of the engagement. We were fortunate to have very honorable vendors involved but also to be able to reflect the changes in the system as the installation dragged out.

**Automated Fingerprint Identification System (#78416 for KBI)**

Awarded for \$2,669,182. Lowest bid of the three vendors involved at the start was \$2,850,563. Though the negotiations saved us significant money, we were initially able to get the awarded vendor to agree to honor prices for later added units for the cities longer than originally planned or offered. This later allowed Wichita to buy their remote unit. Most importantly, when installation and implementation became troubled, we were able to re-open negotiations, maintain the advantageous pricing, and capitalize on the delay to get added concessions from the vendor, more workstations and capacity within the system. The system was successfully installed. Without negotiating ability, there's a strong likelihood we'd have been involved in a lawsuit with the awarded vendor and with one of the unawarded vendors.

**Medicaid Management Information System (#80760 for SRS)**

Awarded for \$41,350,000. EDS original bid was for significantly more. EDS was the sole respondent, so we would have been able to negotiate with them anyway had this been done as a RFQ, but at the outset we didn't know they would be the only bidder. EDS later suspected they were the sole bidder, but couldn't confirm it prior to award, due to the differences in approach between RFQs and RFPs (disclosure vs. non-disclosure of bidders and pricing etc.). This difference gave the state significant leverage during initial negotiations that we wouldn't have had at all if it'd been a RFQ setting, and the vendors and prices had been disclosed at the opening.

**Optical Disk System for Birth Certificates etc. (#28044 for KDHE)**

Awarded for \$1,289,358. We were able to amend the specifications as part of the negotiating process when one of the vendors pointed out how our wording had led them to make a different assumption than the other vendors. If we hadn't been able to change the specifications, we would have had an "apples to oranges" comparison and would have had to start over, or we could have had a compromised award that could have been overturned as we approached implementation (the difference wouldn't have been apparent until one examined the way the agency's cash register system interfaced with the ODS). There were other significant differences between the offerings we were able to compensate for in the evaluation/negotiation process, successfully enough that when one of the vendors filed a protest at the end of the process, the review and decision about whether the process had been fair took only a few hours. Without negotiating ability, I doubt the system could have been successfully awarded without at least one complete rebid.

**CPMS/MSIS/EIS (#81668 for DOT)**

Awarded for \$1,636,120. Evaluation and negotiation involved several firms, some of whom were deemed marginally qualified, and one that bid a "comparable system". If this had been a RFQ, the more abbreviated approach to evaluations and award would probably have left these firms extremely dissatisfied and in a litigious mood. Instead, we were able to provide all of the firms with a chance to present their case, or make up for the deficiencies in their proposal, or salvage the business, however you want to express it, and ended with only one of the firms feeling obviously upset. Since this acquisition was key to many of the other DOT administration acquisitions to follow, it was critical to DOT as well as to the involved vendors, and could have resulted in major problems if it had gone sour.

**Superminicomputer (#81998 for KU)**

Awarded for \$814,222. The awarded vendor also agreed to substantial price concessions on related equipment, and guaranteed those concessions for an extended period of time until the state's funding became available. These concessions were not required in the solicitation.

**Nursing Case Mix Management System (#83348 for SRS)**

Awarded for \$1,060,000. Initial bid of the respondent was higher by several thousand dollars, which the agency recommended as the initial award amount. We opened negotiations with the firm and reduced the price in less than 30 minutes, making the award the same day as we received the agency recommendation.

**System Upgrade (#84415 for Treasurer)**

Awarded for \$410,173. Initial bid of the sole respondent was \$498,575.25.

STATE OF KANSAS



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M E M O R A N D U M

TO: Nicholas B. Roach, Director of Purchases  
FROM: Fran Welch, Division of Purchases  
DATE: April 1, 1991  
RE: Quarterly Reports to Legislature

Following are examples of activity in the referenced reports by category.

ADVERTISING WAIVER

July 1987 - Department of Corrections: Security Fence for Kansas Correctional Institute at Lansing

November 1988 - Adjutant General's Department: Reroof State Defense Building

January 1988 - The Kansas Lottery: Grand Prize Draw Envelopes

September 1988 - Fort Hays State University: Repair Gross Coliseum Floor

March 1989 - Department of Social and Rehabilitation Services: Data and telephone rewiring to accommodate Comprehensive Automated Eligibility Child Support Enforcement System for Kansas City Area Office

March 1990 - Kansas Development Finance Authority: Title Insurance, El Dorado Correctional Facility

March 1990 - Kansas State University: Property Insurance, Uplink Trucks and Attached Equipment

### EMERGENCY

October 1990 - Kansas Bureau of Investigation: Roof Repair

November 1990 - University of Kansas Medical Center: Repair of MRI Unit. Air conditioning failure caused MRI to malfunction.

May 1990 - Topeka State Hospital: Repair hi-voltage electrical services to buildings

September 1990 - Department of Transportation: Repair of roadway that had major joint faulting

December 1990 - Winfield State Hospital: Physician Services

Several severe emergencies which I recall, but the records are stored in the basement somewhere are: Department of Transportation: 1) Repair of bridge at Atchison when a boat rammed it, 2) road repair when an explosion occurred south of Topeka, and 3) Occasional bridge repair after heavy rains.

Other common occurrences are replacement of x-ray tubes, asbestos removal, elevator repair, plugging abandoned oil wells, boiler and air conditioning repair

### LABORATORY OR EXPERIMENTAL

November 1989, Kansas State University: Sorghum grain for beef cattle research

Spring 1990, Kansas State University: Corn, milo and wheat for beef cattle nutrition research

July 1990, Kansas State University: Carcasses and wholesale cuts of meat for use in teaching and research programs.

### LOCAL PURCHASE AUTHORITY

December 1987 - \$10,000 local purchased authority granted to:  
Kansas Department of Transportation  
University of Kansas  
University of Kansas Medical Center  
Wichita State University

April 1988 - Pittsburg State University: One time approval for removal of walk-in cooler and preparation of floor for installation of a new cooler in Gibson Dining Hall.

July 1989 - Kansas Correcational Industries: Air monitoring services

February 1990 - Kansas Correctional Industries: Livestock for slaughter at meat processing plant, Oskaloosa

October 1990 - Social and Rehabilitation Services: Independent Living Coordinator Contracts

CONTRACTS BETWEEN STATE, FEDERAL, ETC. AGENCIES

November 1989 - Department of Transportation with University of Kansas to develop and implement substance abuse awareness and testing program.

November 1989 - Board of Agriculture with National Agriculture Statistic Services to secure agriculture statistics

January 1990 - Department of Transportation with University of Kansas Center for Research, Inc. to perform research and evaluation on bonding characteristics of confined epoxy-coated reinforcement to concrete

March 1990 - Department of Corrections with Allen County Community College, Butler County Community College, Kaw Valley Area Vocational Technical School, Colby Community College, Hutchinson Community College, Kansas City Area Vocational Technical School, Saint Mary College of Leavenworth, Central Kansas Area Vocational Technical School, Barton County Community College and Cowley County Community College for educational program services.

April 1990 - Department of Social and Rehabilitation Services with Sedgwick County Board of County Commissioners for co-operating exploited and missing child unit.

June 1990 - Department of Education with USD 259 to administer national diffusion network

July 1990 - Kansas Water Office with U.S. Geological Survey for stream aquifer interaction study on the Arkansas River

SOLE SOURCE

October 1990 - Division of Information Systems and Communications: Upgrade of Law Enforcement Message Switching System - Tandem Computers

October 1990 - Corporation Commission: Expert rate design and cost allocation cConsulting: George Donkin and Dr. Klaus Becker Associates

November 1990 - Fort Hays State University: License for CICS Monitor - Landmark Systems

December 1990 - Kansas State Library: Contract for network services, E-mail Network, ALANET - American Library Association

October 1990 - Kansas State University: Airways surface observations magnetic tape - National Oceanic & Atmospheric Administration

December 1990 - University of Kansas: Automatic document feeder and finisher and installation of equipment on Kodak 100P photocopier - Eastman Kodak

February 1990 - Department of Corrections: Test booklets and answer sheets for Correctional Facilities (copyrighted material) - Psychological Corporation

April 1990 - University of Kansas Medical Center: Stereotatic heat apparatus for lithotripter - Arizona Health Sciences Center

June 1990 - Department of Revenue: Membership to the national communications network to connect the 50 states' information processing systems to commercial driver license information system

January 1991 - University of Kansas Medical Center: Kidney transplant drug: Ortho Pharmaceutical Corporation

Other common sole sources are software acquisition and machine repair.



# Kansas Engineering Society, Inc.

627 S. Topeka, P.O. Box 477, Topeka, Kansas 66601 (913) 233-1867

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**Testimony in Opposition  
to HB 2454  
Senate Elections Committee  
April 3, 1991**

Chairman Sallee, members of the committee, I am Bill Henry, Executive Vice President of the Kansas Engineering Society, and I appear today in opposition to HB 2454 on behalf of the more than 900 members of the Society.

The members of the Society oppose Section 54 of the bill that would require competitive bids for engineering services. Today, the prices for professional engineering services are negotiated by choosing from a qualified list of engineers for particular projects.

Under Section 54's provision the state would be unable to seek experts to aid in the design of engineering projects; rather the low bid would determine what is the best professional engineer for a given project.

Currently K.S.A. 75-5801 provides: "The legislature hereby declares it to be the policy of this state to publicly announce all requirements for engineering services, and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable fees."

Kansas enacted this policy in 1977 based upon state uniform law recommendations that recognized engineering designs are unique and that each project requires particular experience in staffing to perform those services required for the project.

This theory of selection of engineers based upon qualifications has been adopted by nearly all states and the federal government because "low" bids do not necessarily produce the most economical projects.

Our current procurement procedures work well and provide for economical engineering services for the state.

For these reasons Section 54 should be deleted from the bill.

Respectfully submitted,

Bill Henry  
Kansas Engineering Society





GEORGE BARBEE, EXECUTIVE DIRECTOR  
810 MERCHANTS NATIONAL BANK  
8TH & JACKSON  
TOPEKA, KANSAS 66612  
PHONE (913) 357-1824

STATEMENT TO THE SENATE ELECTIONS COMMITTEE  
REGARDING HB 2454  
April 3, 1991

Mr. Chairman and members of the committee, my name is George Barbee, Executive Director of the Kansas Consulting Engineers which is an organization that is made up of approximately 60 engineering firms of various sizes that perform professional design services for clients in the state of Kansas. These firms employ approximately 5,000.

Thank you for allowing me to be here today to discuss something that is a serious concern to the Kansas Consulting Engineers. That is the provisions in Senate Bill 2454 which call for competitive bidding for professional services and for competitive bidding for change orders.

Let me address the competitive bidding for professional services first.

Some of you may recall that in 1976, because of an attorney general's opinion that interpreted the purchasing statutes to require competitive bidding for professional services, one Kansas Department of Transportation highway project was awarded through the competitive bidding process. Just briefly, two bids were received, one was for approximately \$20,000 from New Jersey and one was approximately \$60,000 from a firm in Kansas. The project design and construction documents were never delivered to the Kansas Department of Transportation from the firm in New Jersey which was awarded the contract based on the low bid. The firm shortly thereafter went out of business and was under several indictments in New Jersey. We don't know the details of that case or the outcome, but the point is that we went through the process and we see the results of competitive bidding.

One of the essential ingredients in drawing up a contract is a meeting of the minds. Both parties must know what is required of each other to produce an end product that satisfies the owner and the user. This meeting of the minds is particularly essential for something as complex as an engineering project for the State of Kansas. If a design professional is forced to submit a price before final negotiation of the contract, he is guessing. The results of quoting fees by this "pig-in-a-poke" method lead to over-design or under-design for projects. In either case, the end result is inadequate. The engineering firm is not selling a product or materials, it is selling education, judgement and experience to determine the best solution for the problem at hand. In short, the firm is selling time, judgement and experience to solve a design problem and if one firm thinks they

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AFFILIATED WITH:

KANSAS ENGINEERING SOCIETY    AMERICAN CONSULTING ENGINEERS COUNCIL    PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE    NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

can do it cheaper than the other, they are simply devoting less time, judgement and experience. That has to affect the quality of design plans, specifications and construction documents with no consideration for value engineering.

Value engineering is a common term in our industry today. It is the process of emphasizing cost as an essential design parameter while retaining the value of the project and freedom of design expression. The design community is in favor of value engineering because it is a means to improve cost effectiveness of the life-cycle of the project. Value engineering and competitive bidding for professional services are not compatible.

The standard for selection of engineers was established long ago at the federal level and at the state level.

For federal projects, where the contract is with the agency, selection must follow the Brooks Bill enacted by Congress in 1972. It says, "The Congress declares it to be the policy of the federal government to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional service required and at a fair and reasonable price."

For State of Kansas contracts the state agencies must follow the 1977 statute KSA 75-5801 which begins by saying, "The Legislature hereby declares it to be the policy of this state to publicly announce all requirements for engineering services and to negotiate contracts for engineering services on the basis of demonstrated competence and qualification for the type of professional service required and at a fair and reasonable price."

These policies reflect the recommendations made later by the American Bar Association when a model procurement code for state and local governments was established. The code says, "It is the policy of this state or local unit of government to publicly announce all requirements for architect, engineering, land surveying services and to negotiate contracts for architect, engineering, land surveying services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices." Some Kansas cities and counties have adopted procurement policies that reflect the aforementioned policies.

The procedures established to meet these policies are time proven to be the best way to select engineers for design services, yet, some say that to save money they will require price proposals.

The cost of engineering is usually about 7-10% of the cost of construction. The cost of construction is usually about 10% of the life-cycle cost of a project. That is, the cost of operation and maintenance costs over approximately 40 years. You can examine some of the state projects and see that the cost of

engineering is about 1% of the total cost of the construction plus operational and maintenance costs.

It seems obvious that a good, well-thought-out, value-engineered design can save incredible amounts of money when there is some investment up front for good, practical engineering judgement that allows an engineer to consider life-cycle cost and cost-effectiveness of the project.

We can give you low cost engineering, we can ignore the benefits of value engineering, and you might make a small savings in the cost of engineering. It may even look great to the tax payer until the facility is built and it leaks, or it settles, or it costs too much to cool, or it is on someone else's property, or any of a thousand possible problems. While such things can happen on any job -- even the best firms -- experience has clearly shown that the engineer who cuts corners to meet the low price runs the greatest risk in problems on his job, both during and after its' construction.

We can design cheap, though. We can design it "hell for stout". If there's a retainer wall required, we can make it 2 foot thick and solid concrete. We can ignore questions about should there be a culvert, timber pilings, concrete pilings, or no pilings? Should there be a sidewalk to allow fishing, or a bike trail or both? We can design it with lots of pilings and lots of concrete and we can charge less for doing that because we're not so concerned about giving alternates for the owner or concerned about construction costs. But, the construction costs can certainly be astronomical when we do this. Or, you can sit down and discuss these things as we arrive at an agreed upon scope of services and fee.

The procurement procedure that is well established in Kansas for state contracts is to select based on competence and qualifications and negotiate a fair and reasonable price.

We understand you must know what the price for the engineering is before a contract is signed. The procedure that is now used allows state officials to negotiate for that price and if they cannot come to an agreement with the engineering firm that has been selected to negotiate with, they are to terminate with that firm and go to the second firm on the ranking list. If they cannot agree on a price with the second firm, they are to terminate and go to the third firm on the list of the top three. If they cannot agree with the third firm, then obviously the agency is asking for too much for the budget that has been allowed, and they need to go back to the drawing board and re-define the project and start over.

In so doing, they have gained a most important piece of information, and that is, "You can't get the job done for the budget that has been allowed." The point is, we do not advocate that you select us and then are stuck with a price that we tell

you we are going to charge you. You select the firm to negotiate with and if you can't establish the price, you are under no obligation to that firm.

This procedure has been carefully prepared for the mutual protection of the state and the consultant. It has withstood the test of time since 1977 and is widely accepted. I urge you to retain the status quo for the procurement of architects and engineers in the State of Kansas and reject these House amendments.

As to change orders being competitive bid on a project, this recommendation has the potential of greatly escalating the cost of a construction project and escalating the cost of fees paid to engineers and architects. If contractors are to bid on change orders then someone has to prepare the bid documents for the change orders. In many cases this will be the consulting engineer and in other cases the state agency. Either way it is a costly step. It is the standard of the industry to negotiate with the contractor on the job for change orders that become necessary. We do agree that the State needs some mechanism in case a contractor and the state agency is not able to negotiate an agreeable price for a change order. Current statutes allow competitive bids if necessary. However, in many cases the construction contracts provide for force account procedures for change orders where the contractor is paid for labor and materials. The contract also allows for profit at a set amount. It is not necessary to have legislation to provide for these contractual provisions.

Some change orders can cost hundreds of thousands of dollars. Can you imagine the time delay for a project while the contractor is waiting for the state to go through a procedure of advertising and awarding a contract for a change order and then waiting for another contractor to complete work? Or, can you imagine the problems the general contractor would encounter to coordinate the work with the other contractor? It would be a horrendous administration problem and very costly to the State in paying the additional fees for engineering and construction. This would obviously lead to time delays which could cause projects to run long which also is very costly.

We urge you today to reject these House amendments to 2454 and retain the current language that has proven to be in the best interest of all concerned.

On behalf of the Kansas Consulting Engineers we do appreciate this opportunity and would stand for questions.



# League of Kansas Municipalities

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

April 4, 1991

Senator Don Sallee  
Chairman, Senate Committee on Elections  
Room 128-S, State Capitol Building  
Topeka, Kansas 66612

Dear Chairman Sallee:

Attached is a copy of the League's testimony to the Senate Committee on Elections on HB 2454. I gave an oral summary of this testimony to the Committee at its meeting on April 3.

For the reasons set out in the attached testimony, the League requests your Committee's consideration of the following:

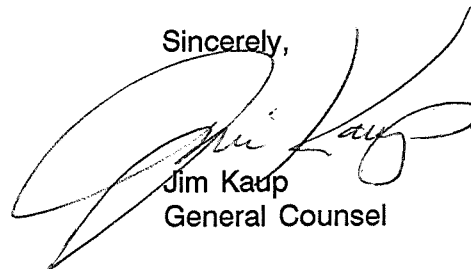
**Section 19, page 19 and Section 53, page 42;** the League requests clarification of the intended consequences of these requirements, especially for violations arising after a valid filing for local office, but before the holding of the election or the swearing to office. In the alternative, the League recommends deletion of Subsection (b) of Section 19 and Section 53.

**Section 52(b), page 42;** the League respectfully asks for the Committee's deletion of Section 52(b) of HB 2454.

**Section 60(b) page 50;** the League also respectfully requests deletion of Section 60(b) from the bill.

I appreciated the opportunity to appear before the Committee on April 3, and regret that I was not able to provide the Committee with the attached written testimony at that time.

Sincerely,



Jim Kaup  
General Counsel

Senate Elections  
April 3, 1991  
Attachment 12



# League of Kansas Municipalities

## Municipal Legislative Testimony

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

TO: Senate Committee on Elections  
FROM: Jim Kaup, League General Counsel  
RE: HB 2454; Governmental Ethics  
DATE: April 3, 1991

The League did not appear before the House Committee on HB 2454, primarily because prior to House floor amendments the bill caused only modest concerns for our member cities.

As noted below, four specific sections in HB 2454 encompass the League's interest in this bill. We wish to point out to you not only the public policy shortcomings some of these sections have, but also some of the logistics involved with the bill's proposed regulation of local elections and candidates for local office.

As you know, Kansas has a large number of local units of government--over 4,000 by the League's most recent information: including 105 counties, 627 cities, 1,416 townships and 304 USDs. This translates to a great number of locally-elected public officials--3,814 mayors, councilmembers, and commissioners alone, plus an unknown, greater number of candidates for those local offices.

One of the problems of local elections seen by the League over the years has been getting qualified people to run for and hold local office. We have an ongoing concern regarding any state laws which work to discourage good people from being officers of local governments. Too many positions are now won by write-in elections because no one cares enough to file for office. Another ongoing problem has been one of finding competent people willing to be appointed to fill vacancies in elective local offices in small cities.

### **Sec. 19, page 19, and Sec. 53, page 42 of HB 2454.**

The League has the same general concerns for these two proposed restrictions upon candidates for local office. We question whether the "benefits" intended will outweigh the "costs" we see from them.

(1) Sec. 19(b), page 19. HB 2454 would amend Supp. 25-4181 to declare ineligible as a candidate for local office anyone who has failed to file required campaign reports or paid a civil fine assessed under the campaign finance act. The immediate issue is--How does one become "ineligible to become a candidate"? If the ineligibility exists at the time one files for local office, it is likely the county election officer will so advise the person. However what if the ineligibility arises after a valid filing for office? Is the person's name taken off the ballot? If not, who wins the election if the violator of Sec. 19(b) gets the most votes? Could an errant winner "cure" the ineligibility by paying the fine or filing the report anytime after the election but before being sworn to office?

The League has concerns about the implementation of Sec. 19(b). Unless these concerns can be eliminated we ask for its deletion.

(2) Sec. 53, page 42. HB 2454 mandates "property tax and income tax clearance approval" from the state and county before any local elected officer may be sworn to office.

While not disagreeing with the basic point that public officials ought not to be tax-avoiders, the League would simply point out some of the consequences of Sec. 53. First, the state's division of taxation will be required to process requests from 3,814 mayors, councilmembers and commissioners from our 627 cities, over 500 requests from the 105 counties, several thousand from school boards and over 4,000 from the 1,400 townships in Kansas. County treasurers will receive similar numbers of requests for property tax clearance approvals. Second, as noted earlier, many local government offices are held as the result of write-ins and many others are held by appointment to fill vacancies created by the death or resignation of an elected officer. It will be a difficult task to inform all these public officials of their duty to have a tax clearance request before being sworn to office.

**Sec. 52, page 42 of HB 2454.**

This House-passed amendment to K.S.A. 46-234 prohibits all "elected local officers" from campaigning for or being elected to "any state or local office" if the term for that second office commences during the term of the office already held.

While we are not aware of the problem that this amendment seeks to cure, we do know some of the consequences it would create. There are at least 4,000 local units of government in Kansas--most, but not all, of which have elected governing bodies. Since "elected local officer" is not defined in Section 52, the League assumes it applies to all such officers--including not only mayors, commissioners and councilmembers, but also county commissioners, clerks, treasurers, township trustees, school board members, community college trustees and so on.

Section 52(b) would change the common-law rule of incompatibility of office (dual officeholding) in Kansas. It would forbid the simultaneous holding of two elected offices even where such has been reviewed and approved by the courts and the Kansas Attorney General--e.g. county attorney/school board member; mayor/election commissioner; community college trustee/state legislator; and mayor/state legislator.

Section 52(b) also raises some confusing issues regarding its implementation, not the least of which is: what happens to the officeholder, and the election, when a "violation" occurs? What happens when a city councilmember is a write-in winner in a mayor's race? When a township trustee or school board member is written in at the county commission election? Do they lose their prior-held office or are they just ineligible to be sworn to the office the voters elected them to? Also who wins if they don't? If the voters' will is thrown out, must another election be held? Will the state law dictate that one of the election "losers" will be forced upon the voters?

Out of respect for the capacity of the voters to decide who they want on the ballot and who they want in elective offices, and because we are unaware of any problem justifying enactment of Section 52(b), the League asks the Committee to delete it from HB 2454.

**Sec. 60(b), page 50 of HB 2454.**

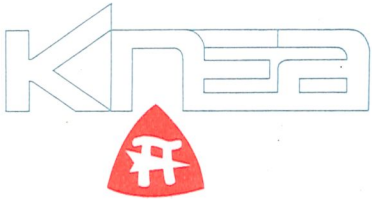
The House amended K.S.A. 46-232 to provide: "No...political on taxing subdivision...funded in whole or in part by state funds shall expend any funds for the purpose of employing a lobbyist."

Because Sec. 60(b) was a House floor amendment and therefore accomplished without the benefit of committee hearings or discussion, the League is somewhat at a loss in understanding its intended scope and application. We do not know if it was intended to prohibit organizations such as the League from appearing before the Kansas Legislature. However we do believe a "worst case" reading of Sec. 60(b) leads to that conclusion. The "best case" that the League can give to Sec. 60(b) is that it would require our 527 member cities to pay their League dues from city funds which have not been combined with state aid moneys.

Regardless of the correct reading of Sec. 60(b), we question the justification for it. When did it become improper for a city, county, or other local unit of government to expend public funds in an effort to communicate the needs and desires of the community to state lawmakers? What is the problem that is sought to be resolved by such a drastic change in present law?

The League asks this Committee to delete Sec. 60(b). In the alternative, we would ask for your amendment of K.S.A. 46-222(b) [Section 26 of HB 2454] to give local government officers and employers, when carrying out the duties of their office, the same exemption from the lobbying laws that state officers and employees now enjoy.





Craig Grant Testimony Before The  
Senate Elections Committee

Thank you, Mr. Chairman. I am Craig Grant and I represent Kansas-NEA. I appreciate this opportunity to visit with the committee on HB 2454.

I'll try to touch on sections which affect our organization; however, I would state a brief word of caution--I hope that the Senate does not make the same mistakes that the House did. After eleven weeks of serious consideration in committee, including extensive subcommittee work, the bill was amended 12 times and I am not sure that many knew what they were voting on when final action came. I recommend caution and careful consideration of actions lest we create a monster we can not live with in our state. Even if some of the changes take until next session, we still could pass proper changes before the next election.

Now to the bill. We would comment on the following sections:

1. We have no problems with Section six which includes school board candidates under the act. Originally this just applied to the largest five schools since many of these candidates spend considerable amounts of money to be elected to a nonpaying job. However, I live in a fourth enrollment school district and it appears that a considerable amount was spent in the last election on ads and direct mail. If a candidate spends or receives less than \$500, an affidavit of exemption can be filed. If more than \$500 is spent or received, disclosure should be made in advance of the election just as other candidates must do.
2. We do not mind the registration or lobbying fee increase as long as the money stays in the public disclosure fee fund. The bill solves the problem of small PAC's which collect very small dollars.
3. Section 12 should be amended to clarify the real intent of the

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House which would have banned corporation, union, or organization contributions, but would have allowed PAC contributions. We supported the amendment added in committee, but removed on the floor, to allow no more money from PAC's than a candidate collected from individuals (not the party).

4. I have some concern about Section 24 and its new code of conduct. The code seems fine, but I believe that the language could encourage numerous written complaints (frivolous ones being the main concern) which would cause undo hardship on the candidate and his or her chances. This is further compounded by making the complaint and response public. That could cause unwarranted adverse publicity to the candidate.
5. We have no problems with the \$20 gift limitation, but we wonder about refining the definition of hospitality to include the entertaining (golf tournaments, etc.) which presently occurs.
6. We like Section 37 which allows registration on or after October 1.
7. I have a question on Section 39 as to what might constitute a "preparation of proposal, position paper, or similar document." Does this mean my cost of paper and duplicating costs of this testimony? I hope not.
8. We have no real problems with the subpoena power as established under Sections 14 and 36 of the bill.

This appears to be all the areas I need to comment on today, Mr. Chairman. I hope you can and will take the time necessary to develop and adopt a good code of ethical behavior for Kansas Government. As I have said before, I believe we run a "clean ship" and our ship is not broken. Changes to insure continued ethical conduct are welcomed.

Thank you for listening to our concerns about HB 2454.



Testimony on H.B. 2454  
before the  
Senate Committee on Elections

by

Mark Tallman, Coordinator of Governmental Relations  
Kansas Association of School Boards

April 4, 1991

Mr. Chairman and members of the Committee, we appreciate the opportunity to appear before you on behalf of the member boards of education of the Kansas Association of School Boards with regard to the provisions of H.B. 2454. We have concerns about several provisions of the act as they would affect local boards of education.

Our primary concern is with the new language of Section 6 which would bring candidates for the board of education under the provisions of the Campaign Finance Act. We believe that this is an unnecessary burden for people who are running for a volunteer position. Unlike all of the other offices which are covered by the Campaign Finance Act, school board members receive no compensation for their duties. We believe that the provisions of the present local campaign act provide sufficient safeguards for election to this office.

As we found in the recent school board elections this past Tuesday, many communities find it difficult enough already to find

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qualified candidates for this important post. Adding new paperwork burdens will only discourage further interest in this unpaid position. A similar argument might be made with regard to the tax clearance provisions found in Section 53.

We also believe that the provision added to Section 60 of the bill on the House floor which would prohibit the hiring of a lobbyist by public bodies is inappropriate. Much of the legislation considered by this legislature has a direct or indirect effect on the operation of local school districts. Most school board members also hold full time positions outside their school board duties and do not have the time or resources to come directly before the legislature. We do not think they should be prohibited from employing someone to represent their interests before this body.

We appreciate the opportunity to present the views of our members on this issue and I would be happy to answer any questions.



Kansas Association Of **Broadcasters**  
818 Merchants National Bank, Topeka, KS 66612  
PHONE (913) 235-1307 FAX (913) 233-3052

TESTIMONY  
BEFORE SENATE ELECTIONS COMMITTEE

April 3, 1991

By

Harriet Lange, Executive Director  
Kansas Association of Broadcasters

RE: HB 2454

Mr. Chairman, Members of the Committee, I am Harriet Lange, executive director of the Kansas Association of Broadcasters (KAB).

We appreciate the opportunity to appear before you on HB 2454.

Our concern with the bill is New Section 51 (page 42). This section was added by the House Elections Committee after the public hearings on the bill concluded. It was included without the benefit of public input.

Section 51 would require chief executive officers of radio and television stations and newspapers to file campaign contribution reports if they broadcast or publish editorials in support of or opposition to any candidate for state or local office. Failing to do so would result in penalties and/or fines.

As a practical matter, very few broadcast stations if any, endorse or oppose candidates. This area of broadcasting is already governed by the Federal Communications Commission's (FCC) stringent political broadcast rules.

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In the event a station endorses a candidate, that station must notify all opposing candidates of the date and time of the broadcast; provide a script or tape of the broadcast; and offer them the station's facilities to respond. Opposing candidates then have seven days in which to request (free) time. The FCC also requires that all documentation be filed in the station's public inspection file.

It would be difficult to determine the value of a broadcast editorial candidate endorsement. Most stations' rate cards include charges for 10-, 15-, 20-, 30-, and 60-second spot announcements. Station editorials on the other hand range from three to five minutes - not a standard commercial length.

If the arbitrary value of a newspaper or station editorial exceeds the contribution limit, would the media then not be allowed to endorse a candidate? Or would a newspaper or station endorsement constitute a "corporate" contribution, which apparently would not be allowed in Section 12 of the bill?

Section 51 raises a constitutional question as it relates to the First Amendment and a free and unrestrained press. If challenged, the state must show a "compelling interest" for this provision to uphold its constitutionality - usually very difficult in First Amendment cases where the speech at issue is political.

If this committee is intent on passing out this bill, we urge you to amend HB 2454 by striking New Section 51. Thank you for your consideration.

POSITION STATEMENT  
From the Kansas Bar Association

April 3,

TO: Members, Senate Elections Committee  
FROM: Ron Smith, KBA Legislative Counsel  
SUBJ: HB 2454; amended by the House

KBA opposed parts of HB 2342, which was HB 2454's predecessor. We also opposed parts of original HB 2454. There are several other areas we want to bring to your attention in the House version.

1. Page 24, lines 1 through 12: what is meant by "substantially involved in the preparation of" a contract? Having read the contract? Giving advice on the contract? Preparing provisions of the contract?

2. Page 26, lines 1 through 11 contain stricken language that KBA would like to keep stricken. With regard to attorneys, there are Separation of Powers questions when the legislature sets practice standards for attorney-legislators in other than "administrative" cases.

3. Section 39, lines 33-41. Without getting into a treatise, I would just note that regulating lobbying is regulation of the First Amendment privileges. Speech regarding political expression in governmental affairs "is at the heart of the First Amendment protections."<sup>1</sup> The widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.<sup>2</sup> That is what the lobbying function

<sup>1</sup>First Nat'l Bank v. Bellotti, 435 U.S. 765, 776-77 (1978)

<sup>2</sup>Citizens Publishing Co. v. U.S., 394 U.S. 131, 139-140 (1969).

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provides -- diverse opinion on what constitutes good public policy.

4. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals; rather a government must insure that, even when its regulation is not content-based, the restriction narrowly focuses on the source of the evils the state intends to eliminate.<sup>3</sup>

The reporting requirements under the lobbying laws used to be minor. This section is a **major expansion** of not only what is reportable, but the records required to track and document the reports.

Further, under certain situations the compelled disclosure of association information can seriously infringe on privacy rights of the association and beliefs shared by the members of the association, as guaranteed by the First Amendment.<sup>4</sup>

I'm not saying that the new reporting requirements in Section 39 are unconstitutional. I don't know. **The key is at what point in the regulatory process does this legislature go passed the licensing function of lobbying, into intrusive regulation of the content of lobbying?**

5. The only way KBA can avoid this reporting requirement -- and the criminal law that goes with it -- is to self-censor ourselves into foregoing our responsibility to our members of our legislative program, never commenting on legislation,



**KANSAS BAR  
ASSOCIATION**

<sup>3</sup>Ward v. Rock Against Racism, 491 U.S. \_\_\_\_ (1989).

<sup>4</sup>Buckley v. Valeo, 424 U.S. 1, 64 (1976).

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go to get raw numbers for a story on lobbying costs. I see nothing in the Constitution that creates a right for the media to have a statutory means of news gathering for certain watchdog organizations or newspapers at taxpayer expense.

11. The tax clearances required on pages 42-44 must have some cost of compliance for 40,000 state employees.

12. We agree with Art Griggs that Sections 54, 55, 56, 57 and 58 make major changes in competitive bidding laws should probably be stricken. You may have a second subject if you tuck this topic in with an "ethics" bill. It is not unethical not to competitively bid services and products contracts.

Those are our concerns with the bill.

and never calling our members to action on behalf of the public interest. That is a form of prior restraint. If the legislature has no direct power to regulate the content of our communications with members because of the First Amendment, why should lobbying regulation laws give you that indirect power through regulation of costs of lobbying?

6. The traditional "evil" that legislatures seek to corral with lobbying regulation is that form of lobbying which constitutes "undue" or "wrongful" influence of the legislative process. **The point is, how does reporting costs associated with preparing a legal brief, or travel expenses, constitute undue or wrongful influence on the legislative process?**<sup>5</sup>

7. Under existing regulations of the P.D.C, the preparation of legislative proposals or recommendations is not a reportable expense of lobbying.<sup>6</sup> What evil has the legislature recently uncovered that shows that these types of costs, which since 1976 have specifically NOT been reported, all of a sudden should be reported?

If travel is reported, do I apportion the cost of travel between legislative matters and nonlegislative matters? Must the travel involve actual contact with a state legislator? State official? If so, on what basis?

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<sup>5</sup>Indeed, those are "services" set by independent third-party providers whose costs are similar to other providers of their "service." What undue influence the public learn of if they find out that legal services to organizations registered to lobby constituted \$35,000 in 1991?

<sup>6</sup>K.A.R. 1989 Supp. 19-61-1(b).

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How remote is the "travel" in my report? If I attend the National Association of Bar Executives meeting in Atlanta and we discuss state efforts on professional service taxes, what part of my travel is reportable?

8. Page 36, line 36: "communications for the purpose of influencing legislative or executive action." **Please define what that means -- and I'd rather have the legislature define those costs than the P.D.C.**

(a) What is a communication? Long distance telephone? Fax equipment charges? A portion of my regular telephone lines?

(b) If I process a mass mailing in the basement print shop at KBA and mail from there, is the cost reportable with labor, or without labor? If I send it to Pre-Sort and pay a per-item handling fee, and they do the work, what is reported? Labor?

(c) Is the paper that this handout is printed on reportable as a cost under Section 39, line 36-37? Is the cost of a letter to you addressed to the capitol also reported? If the answer to the first question is "No," and to the second "Yes," if I send legislative testimony with a cover letter, is the unreported cost of the handout now reportable? On what rational basis? Because it went through the postal system?

(d) Is the cost of a letter and position paper reported if YOU ask me for extensive legislative information, or only if I send you information? If I deflect your letter of inquiry to a KBA

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member attorney who researches and writes you a response, is that pro bono time reported?

The reason I'm concerned is if I wrongfully report, I face a Class "B" misdemeanor. This is important legislation to us because the major association of lawyers and judges in Kansas wants to make sure our lobbying is well above the appearance of impropriety, let alone subject to misdemeanors. **Current law does not define what "costs" are to be reported as mass media communications,<sup>7</sup> and now you're EXPANDING what shall be reported without any definitions?** If you're going to make the law, give us the definitions that we must work with.

9. Finally regarding section 37(a) we don't require reporting of the expenditures of newspapers whose editorials influence executive and legislative branch actions. We do not require reporting of costs associated with influencing legislation by state officers and employees, e.g. college professors and department heads.<sup>8</sup> Nor can you, since that would be a prior restraint. **What is the rationale that says you can make "some" lobbyists report certain costs, but not other well-recognized lobbyists?** If the public deserves the information on all potential undue influencing of legislators, they deserve ALL information.

10. Is the only purpose of reporting this data is so the press has a central place they can

<sup>7</sup>What public interest is served for me to file that KBA spent \$23.63 last month on Mass Media Communications, that amount being a proportionate part of my legislative bulletin that asked 461 subscribers to contact legislators about tax legislation?

<sup>8</sup>These people can directly lobby legislators on the House and Senate floor.