

Approved: March 9, 1995
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 8, 1995 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:
Representative Dennis McKinney
Randy Tongier, Legislative Post-Audit

Others attending: See attached list

SB 100 - State contractor accountability
SB 101 - Changes in budgeting procedures
SB 102 - Establish Kansas performance review board

Bob Nugent, Revisor, presented an overview of Senate Bills 100, 101, and 102.

Jamie Clover Adams, presented written testimony in support of SB 102. Ms. Adams did not appear in person. The testimony cites the long-standing request of the Association to correct the inequity contained in the Noxious Weed law that requires counties to subsidize the cost of weed control chemicals to landowners and requires counties to sell these chemicals directly. These chemical sales are in direct competition with local dealers. The Associations support SB 102 because they believe it is money well spent and will insure government services are delivered in the most cost-effective manner possible and provides a positive impact on jobs or taxes when government competes with private industry. See attachment 1

Representative Dennis McKinney, Chairman of the Procurement Subcommittee of the Kansas Council on Privatization, appeared in support of SB 100 and in his capacity as Mr. McKinney stated that the establishing a uniform contractor debarment procedure, clarifies the authority of state agencies to prequalify vendors, and provides flexibility for value based procurement. The procedures are not new and codify procedures presently in place within the State system, but not uniformly utilized by all state agencies. See attachment 2

Randy Tongier, Legislative Post-Audit, testified on cost analysis issues related to decisions to privatize government services and functions. Mr. Tongier stated that in making comparison for contracting with the private sector to provide a service, the figure it would use for its costs for providing the service would not necessarily be all costs attributable to the service. All costs attributable to that service would include certain direct program costs, as well as indirect costs, such as a portion of the applicable administrative overhead. The cost analysis would have to focus on the costs relevant to that decision. Mr. Tongier advised that a certain portion of the raw data necessary to make cost analysis decisions is not available; needed cost information is not readily available in existing accounting records in order to provide needed cost analyses to determine how much government services are costing.

Mr. Tongier questioned whether state agencies are able to do the cost analyses needed and should be performed by the Kansas Performance Review Board's (KPRB) staff. He stated the past audit experience the Legislative Post-Audit reveals that state agency records are not always reliable. If a cost analysis is conducted by experienced cost accountants, it would be free from biases of the state agency and would increase consistency and uniformity in doing cost analyses for different programs. Mr. Tongier pointed out that SB 102 does not include requirements for monitoring contracted services and functions. There is a need

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 8, 1995.

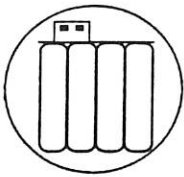
to establish adequate oversight controls. See attachment 3

Senator Kerr raised concerns about the qualifications of the Board members, and whether the Board should include cost accounting experience, and the lack of a "high-noon" provision after 5 years based on a thorough unbiased audit.

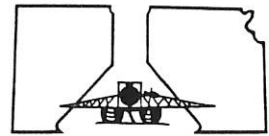
The Chair appointed a Subcommittee with Senator Ranson, Chairman, Senator Feleciano and Senator Steffes to review testimony and make a recommendation to the Committee on SB 100, SB 101 and SB 102.

The Committee adjourned at 9:00 a.m.

The next meeting is scheduled for Thursday, March 9, 1995.



**Kansas Grain & Feed Association
Kansas Fertilizer & Chemical Association**



STATEMENT
TO THE
SENATE COMMERCE COMMITTEE
REGARDING
S.B. 102
SENATOR ALICIA SALISBURY, CHAIR
MARCH 7, 1995



*March 8, 1995
Commerce
Attachment 1*

KGFA & KFCFA advocate public policies that advance a sound economic climate for agribusiness to grow and prosper so they may continue their integral role in providing Kansans and the world with the safest, most abundant supply of food and fiber.

The Kansas Grain and Feed Association

..... a voluntary state organization founded in 1896 providing governmental representation, educational opportunities and a wide variety of other services to the vast and indispensable grain and feed marketing system. The 1200 members of the KGFA include country elevators, subterminal and terminal elevators, feed manufacturers, grain merchandisers and allied industries such as railroads, grain exchanges, equipment manufacturers and insurance firms.

The Kansas Fertilizer and Chemical Association.....

..... a voluntary professional association for those involved in the plant nutrient and crop protection industry. KFCFA represents our nearly 500 members interests in legislative matters at all levels of government, as well as providing educational opportunities and business services. The industry is committed to professional development and business viability for the plant nutrient and crop protection retail industry.

Madam Chair and members of the Committee, I am Jamie Clover Adams appearing today on behalf of both the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). While the two agribusiness associations share staff, they have distinct memberships, separate boards of directors and association programs. KGFA's 1200 members include country elevators -- both independent and cooperative -- subterminal and terminal elevators, feed manufacturers, grain merchandisers and others who serve the industry. KFCA's nearly 500 members are primarily plant nutrient and crop protection retail dealers, but also include manufacturer's representatives, distribution firms, and equipment manufacturers. We appreciate this opportunity to appear in support of S.B. 102.

Both KGFA and KFCA have long standing policy supporting the creation of a review board as outlined in S.B. 102. Both Association's Policy Handbooks outline member concerns about government programs which use tax dollars to establish government operated businesses which then compete directly with the private sector.

The Kansas Performance Review Board (KPRB) will enable policymakers to focus on privatization opportunities and areas of government competition with the private sector. It will provide an opportunity to systematically and objectively gather the facts and evaluate state government services and programs. The KPRB will also serve an important function as a buffer against entrenched interests who have a stake in the continued existence of a program or way of doing business. With a focus on privatization opportunities and government competition in all areas, these interests will not be able to deflect criticism by pointing to another group or activity.

KGFA and KFCA members have experienced government competition firsthand. The Noxious Weed Law requires counties to subsidize the cost of weed

control chemicals to landowners and requires counties to sell these chemicals directly. These chemical sales are in direct competition with local dealers. Association members do not object to the subsidization of weed control chemicals but do object to county government competing with private business. The Association has attempted to bring this issue to the Legislature on several occasions only to have the debate move away from the central issue of government competition with private business and disintegrate into name calling and turf battles. An entity such as the KPRB could objectively examine the facts and make a clear and concise recommendation to the Legislature based on those facts.

Some will argue that S.B. 102 is too costly given the "doing more with less" philosophy advocated by the Graves administration and the citizens of Kansas. KGFA and KFCA would argue that it is money well spent to insure government services are delivered in the most cost-effective manner possible and that the state continue to consider the impact of government services on jobs or taxes when government competes with private industry.

In order to provide government services more efficiently, improve delivery and eliminate government competition, the state must undertake a comprehensive review of state programs. Without this central focus, only limited progress will be made in a hodgepodge manner. KGFA and KFCA support the formation of the KPRB to promote efficiency and improved delivery of state services, as well as to curtail government competition with private business. I thank you for this opportunity to express our views and would stand for any questions.

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: ENERGY & NATURAL RESOURCES
 TAXATION
 TRANSPORTATION

March 7, 1995

Testimony on Senate Bill 100

Thank you for the opportunity to support SB100. SB100 emerged as a result of the work of the Kansas Council on Privatization.

As a member of the Council on Privatization I served on the Procurement Subcommittee. As we studied the issue of privatization we realized that it becomes critically important for the state to have capable and reliable contractors. Contractors are now and will be relied upon to carry out key governmental functions.

New section 1 of the bill outlines a uniform contractor debarment procedure. Contractors should understand that failure to fulfill the duties to the state will result in long term debarment from future contracting by any agency. The state should also have the mechanism in place to protect all agencies from contractors who have proven unreliable. Thus, the provision is both a performance incentive as well as a protection mechanism.

New section 2 makes clear the authority of state agencies to prequalify vendors. Many critical state functions will require contractors who have sufficient resources to accomplish the task in a reliable manner. This is especially true for human services where contractor failure can result in human suffering. As an example, a community mental health care "assisted living" provider must have good internal auditing controls. If not, the board of directors may never know of inappropriate financial procedures. The resulting upheaval can threaten quality of care, scare parents of clients, and cause significant investigation expense for state agencies.

Finally, as we reviewed the statutes we found that KSA 75-37,102 provides a flexible tool for value based procurement. This statute allows a state agency to seek innovative proposals for providing state services. As a precaution, however, we believe that a purchasing decision should be publicly accountable. Therefore, section three would amend 75-37,102 to require the procurement negotiating committee to spell out in public record the rationale for not awarding the bid to the low bidder.

Thank you again for the opportunity to testify. I hope you will support SB100.

March 8, 1995
Carroll

Attachment 2

COST ANALYSIS ISSUES RELATED TO DECISIONS TO PRIVATIZE GOVERNMENT SERVICES AND FUNCTIONS

1. What kind of State cost information is needed to decide whether to privatize government services and functions?

In deciding whether to privatize some service, the State would have to compare its costs for providing that service to its costs for contracting with the private sector to provide that service. In making that comparison, the figure it would use for its costs for providing that service would not necessarily be all costs attributable to that service.

All costs attributable to that service would include certain direct program costs, such as salaries and wages, travel expenses, and capital items, such as furniture and equipment. Further, those costs would include indirect costs, such as a portion of the applicable State agency's administrative overhead costs (for example, the salary of the agency head), and even a portion of the State's general administrative overhead costs (for example, the cost of running the Attorney General's Department).

However, in deciding whether to privatize that service, the cost analysis would have to focus on the costs relevant to that decision. Those costs would be those that could be avoided by privatizing, such as salaries and wages. Those costs would not necessarily include the cost of capital items (generally measured in the private sector as depreciation), nor would they necessarily include indirect costs allocated to the service unless those indirect costs could be avoided by privatizing.

2. Is that kind of cost information available?

A great deal of State cost information is available in one form or another. Most of it is recorded in the State's central accounting system (STARS), while some may be kept in individual State agency accounting records. However, that cost information can best be characterized as raw data, that would need to be developed further to become usable for making privatization decisions.

Depreciation costs (in essence, purchase costs for capital items spread out over the useful lives of those items instead of all being recorded at the time of purchase) generally are not available.

*March 8, 1995
Commerce*

Attachment 3

However, for most privatization decisions, depreciation costs are not relevant because the related capital items already have been purchased. More relevant questions in this area might be, "Can we productively use this asset for other purposes?" and "Can we sell this asset if we cannot use it for other purposes?"

A basic concern under this question would seem to be identifying which of the costs recorded apply to which services and functions. Currently, the State's central accounting system accounts for costs by fund and expenditure category. If the costs of a particular service under consideration are paid from the same fund and recorded in the same expenditure categories as the costs of other services or functions, existing accounting records will not be able to identify the costs of the service under consideration.

In some cases, particularly where federal funding is involved, existing accounting records can identify costs related to some service or function. However, those costs might be only the ones allowed by applicable federal regulations, not the ones needed for making a privatization decision.

3. If needed cost information is not readily available in existing accounting records, can State agencies do the cost analyses needed to determine how much government services and functions are costing?

Gathering, classifying, and analyzing cost information for a specific decision can be a complex and time-consuming task. It involves identifying all types of costs associated with providing a service, specifying which of those costs are relevant to the decision at hand, and determining with sufficient accuracy the amounts of the relevant costs. In some cases, the determinations of cost amounts would involve judgments, estimates, and assumptions.

Doing the above analyses well requires knowledge of program operations, cost accounting principles, and freedom from bias. State agency personnel will know their programs, but they will not necessarily have the expertise to make the assumptions, judgments, and estimates required, nor will they always be able to maintain the independence needed to develop an unbiased cost analysis. Finally, given the complex and time-consuming nature of these analyses, State agency personnel may not have the time required.

4. If State agencies may not be able to do the cost analyses needed, should the Kansas Performance Review Board's staff do the analyses?

The Board could hire the expertise needed to do the cost analyses in the form of experienced cost accountants. Such accountants working for the Board would have the time needed to do the cost analyses, and would be free from biases that employees of the State agency administering the program under consideration could be subject to. Additional benefits would include increased consistency and uniformity in doing cost analyses for different programs, and an independent viewpoint in assessing the accuracy of State agency records. (Our past audit experience has shown that State agency records are not always reliable.)

5. Should State law include requirements for monitoring contracted services and functions?

Once the decision is made to privatize a service or function, that service or function will be performed by the private sector under contract with the State. Many of our past performance audits have shown that, when the State contracts for services, too often it does not establish adequate oversight and controls. As a result, it cannot ensure that contracted services are provided efficiently and effectively.

Options for addressing this concern in State law include assigning the Division of Purchases a greater role in helping State agencies write contract agreements so that performance expectations are clearly spelled out, monitoring procedures are provided for, and sanctions and remedies are specified. For example, the Division would be in a position to recommend that monitoring procedures include a requirement that private vendors keep certain information about how well they are carrying out their responsibilities under the contract, and that this information and supporting documents must be made available for the contract monitor's review. Further, if considered necessary, State law could address concerns regarding access to contractor records by State agencies.