

Approved: 2-23-98
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 11:10 a.m. on February 19, 1998, in Room 254-E of the Capitol.

All members were present except:

Senator Laurie Bleeker - excused
Senator Ben Vidricksen - excused

Committee staff present: Mary Galligan, Legislative Research Department
Robin Kempf, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Midge Donohue, Committee Secretary

Conferees appearing before the committee:

Ms. Barbara J. Hinton, Legislative Post Auditor
Mr. Tim Madden, Chief Legal Counsel, Department of Corrections
Mr. Patrick R. Hubbell, Pat Hubbell & Associates, Inc., Topeka
Mr. John Federico, Federico Consulting, Topeka
Mr. Don Moler, League of Kansas Municipalities, Topeka
Senator Pat Ranson
Mr. John T. Houlihan, Director of Purchases
Ms. Fran Welch, Procurement Officer, Division of Purchases

Others attending: See attached list

The chair recognized Senator Harrington who introduced two students from Mulvane, Rachel Salmans and Lindsey Ott, who served as pages for the committee today. Lindsey's father was a member of the House of Representatives in the 1980s.

Senator Oleen announced that **SB 496**, relating to public records concerning bids and requests for proposals, was scheduled to be heard today and called upon staff to brief the committee on the provisions of the bill which was introduced by the Joint Committee on Corrections and Juvenile Justice Oversight. Staff explained that the bill would add another provision to records that are not required to be disclosed by public agencies, and reviewed the two new provisions which deal with sealed bids, responses to requests for proposals and related documents.

The hearing was opened on:

SB 496 **An Act relating to public records; concerning bids and request for proposals**

Barbara Hinton, Legislative Post Auditor, appeared as neither a proponent nor opponent to the bill, (Attachment #1). Ms. Hinton posed several issues for committee consideration. She said the bill does not address any documentation the agency might have prepared in evaluating bids. In regard to public accountability and oversight, she pointed out that, if there was public concern over an agency's rationale for not acting on bids, or for acting on a later round of bids, there would be no material available to review if the documentation had been returned. Further, she stated that, if no records exist for part of the contracting process, public policy makers would be less able to carry out their oversight responsibilities.

Mr. Tim Madden, Chief Legal Counsel for the Department of Corrections (DOC), appearing in behalf of the Secretary of Corrections, Charles Simmons, referenced Secretary Simmons' written testimony in support of **SB 496**, (Attachment #2). Mr. Madden related an incident that occurred last fall when the DOC issued a request for proposals for the private construction of a minimum security facility and operation of that facility, along with a medium security facility, with the awarding of the bid being contingent upon inmate population projections by the DOC and Sentencing Commission. He said when inmate population projections did not meet the level to trigger issuance of a bid, it created an unusual situation for the DOC in that the department neither awarded nor rejected any of the bids, and the Division of Purchases took the position that the request

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:10 a.m., on February 19, 1998.

proposals submitted did not fall under provisions of the Open Records Act due to the fact that neither event occurred relative to the request for proposal.

Mr. Madden told the committee the DOC recommends this situation be addressed as indicated in the balloon amendments attached to the Secretary's written testimony. He said the DOC supports maintaining confidentiality, and the proposed amendment would provide for confidentiality of bid proposals if they have not been awarded or rejected and serve the interests of the bidders. He pointed out that, if all documentation is returned to bidders, there would be no documentation for governmental agencies to review to determine if the proper procedures had been followed.

The chair asked Mr. Madden to provide background on what prompted introduction of **SB 496**, and he responded that, when the legislature directed the DOC to issue the request for proposals, funding and awarding of bids were contingent upon the need for those facilities to be established and this was controlled by the Sentencing Commission's inmate population projections. He advised that, in order to start the process so the facilities, if needed, would be on line in a timely manner, a request for proposal was issued pursuant to the directive of the legislature; however, after the proposals had been requested, the Sentencing Commission in its annual review established the official inmate population projections and those projections did not indicate a need for either facility. As a result, he said none of the bids could be acted upon because of the contingency clause.

Mr. Madden told the committee that the DOC's position is consistent with the Division of Purchases; that because of the status of the bids, they should not be open records now.

Senator Oleen commented on the time, effort and money involved in the preparation and submission of bid proposals and the issue of ownership when no action is taken on the proposals, and inquired about the time frame involved in the submission of the proposals and learning of the Sentencing Commission's projections. Mr. Madden replied that the deadline for submission of bids was prior to the Sentencing Commission issuing its inmate population projections. He pointed out also that the contingency provisions were included in the request for proposal, along with the appropriate reference to the Open Records Act.

Mr. Pat Hubbell, Pat Hubbell Associates, Inc., Topeka, representing Wackenhut Corrections of Palm Beach Gardens, Florida, spoke in support of **SB 496** and presented a letter from Wackenhut for the official record (Attachment #3). Mr. Hubbell discussed the short period of time allowed for the proposals to be submitted, noting the amount of work required in their preparation, as well as the cost involved. He pointed out that contractors are not only bidding against competitors, but against the state as well, and spoke to the concern over confidentiality of the proposals, urging the return of all documentation.

Mr. John Federico, Federico Consulting, representing Kelley Detention Services, appeared as a proponent of **SB 496** (Attachment #4). He told the committee he wanted to echo the remarks of Mr. Hubbell and urge that documentation be returned when proposals are not acted upon or rejected. He, too, pointed out that the Department of Corrections is a competitor in the bid process. Mr. Federico indicated the biggest concern is who has access to the documentation, and he urged favorable consideration of **SB 496**.

Mr. Don Moler, General Counsel for the League of Kansas Municipalities, spoke in opposition to **SB 496**, (Attachment #5). Mr. Moler said the League was opposing the bill because it did not believe it is necessary, that it affected all local municipalities as well, and that a problem in one place should not necessitate modification of a statute with implications for all cities, counties and other local governments in the state. He discussed the process for handling requests for proposals, and pointed out that the return of all documents and copies may not be possible and, if the bids are reviewed by a number of people, (such as city commissioners), it would seem unlikely they could be kept closed, given the fact they were distributed beyond the initial officer receiving the bids. For those reasons, Mr. Moler urged the committee not to report the bill favorably.

Mr. Mike Taylor, Government Relations Director, City of Wichita, submitted written testimony only in opposition to **SB 496**, (Attachment #6).

The chair recognized Senator Pat Ranson and asked if she would like to comment on the bill. Senator Ranson was accompanied by Mr. John Houlihan, Director of Purchases.

Senator Ranson told the committee she initially thought there was nothing in the statutes that would prohibit the Division of Purchases from returning the documentation in question when no action was taken. She said she was of the opinion the Division had clear authority to do so since it was not prohibited; however, she noted some felt there was a need to be more specific and she saw no reason for the state to have any interest in

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E, Statehouse, at 11:10 a.m., on February 19, 1998.

retaining the information. Senator Ranson pointed out that the state is a competitive bidder and she felt it would be inappropriate and a conflict of interest if it were to retain the material.

Mr. Houlihan, Director of Purchases, was recognized by the chair and invited to comment. He had submitted written testimony (Attachment #7), for informational purposes only, neither supporting nor opposing **SB 496**. Mr. Houlihan told the committee that the incident which prompted the bill introduction was the first in three years of his tenure, and he does not anticipate it would happen again, as it was an unusual situation. He said the current Open Records Act does allow retention of the documentation in question and the information is not open to the public. It was his opinion that an amendment was not necessary.

In response to a request from a committee member regarding the request for proposals process, Mr. Houlihan asked that Ms. Fran Welch, Procurement Officer for the Division of Purchases, be allowed to respond.

Ms. Welch explained the procedure in place for request for proposals, from establishing a closing time and date until the completion of the process.

Senator Oleen inquired if anyone else wished to speak in support or opposition to **SB 496**.

Senator Schraad asked for reaction from Mr. Hubbell to Mr. Houlihan's comments, and Mr. Hubbell replied that cost was not the only factor, but that the technical information remains with the DOC. He said confidentiality is a concern and agrees that the documentation should be returned to the bidder.

The chair asked if there were any further questions; there being none, the hearing on **SB 496** was closed.

Attention was then directed to **SB 518**, concerning the Kansas consumer protection act and the disposal of surplus property.

Senator Oleen told the committee additional information on the vehicles referenced by the Attorney General's Office during an earlier hearing on the bill would be made available upon request.

Staff was asked to brief the committee on a balloon amendment it had been requested to prepare following discussion after the hearing on the bill. The difference between the balloon amendment and earlier action taken by the committee in amending the bill was explained. Senator Oleen requested Mr. Madden, Chief Legal Counsel for DOC, to visit with the Secretary and submit a written statement to the committee advising if the balloon amendment would meet the needs of the department. She indicated that the Office of the Attorney General and all parties involved worked with staff in drafting the proposed amendments.

Senator Biggs moved to reconsider the action taken by the committee in its meeting of February 17. Senator Jones seconded the motion and the motion carried.

Senator Biggs moved for adoption of the proposed amendments, with the effective date upon publication in the Kansas Register, and that it be favorably reported to the full Senate. Senator Harrington seconded the motion. The motion carried.

Senator Becker moved for approval of the minutes of the February 12, 16 and 17 meetings. Senator Gooch seconded the motion, and the motion carried.

Senator Jones requested introduction of a bill regarding special obligation bonds concerning the NASCAR track project in Wyandotte County.

Senator Becker moved for introduction of the bill. Senator Jones seconded the motion, and the motion carried.

The meeting adjourned at 12:10 p.m. The next meeting is scheduled for February 23, 1998.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE
GUEST LIST

DATE: 2-19-98

NAME	REPRESENTING
Michelle Miller	Johnson County
Paul Hinton	Post Audit
T Madden	KDOC
John Federico	KDS
Stuart Little	KLRID
Alan Steppat	Pete Mcbill & Assoc.
Carrin Recht	Brad SMOFT
Totale Begui	Federico Consulting
Jan Weese	Asst A.G.
Don Seifert	City of Otter
Ed Parker	SRS
Don Welch	Purchaser
Kelly Kuitala	City of Overland Park
Adriano M. Stott	TWHS student
Mike Taylor	City of Wichita
Pat Hubbell	Wakenbut
ED SCHAUB	WESTERN RESOURCES
David Almeling	Washburn Rural HS

**TESTIMONY BEFORE THE
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
SENATE BILL 428
Barb Hinton, Legislative Post Auditor
January 29, 1998 11 a.m. Room 254-E**

Madame Chairman and Members of the Committee:

Thank you for giving me the opportunity to speak before you on Senate Bill 496, which amends that section of the Open Records Act allowing agencies to discretionarily close sealed bids and related documents until a bid is accepted or all bids are rejected.

Under this bill, if the agency neither accepts nor rejects the bid proposals, the agency must return all bids and related documents (and any copies that have been made) to the entities that submitted the bids.

I'd like to point out several items for the Committee's consideration:

First, the bill doesn't address any documentation the agency might have prepared in evaluating those bids. Would agencies be allowed to close that information?

The second point relates to a public accountability and oversight issue. Because this bill requires agencies to return all bid-related documents, it would be like bid proposals had never been submitted. If public concerns later arose about the agency's rationale for not acting on bids, or for acting on a later round of bids, there would be nothing to review.

I understand that I'm approaching this issue from an auditor's perspective. But on many occasions, the Legislative Post Audit Committee has directed our office to audit public agencies' contracting processes. Sometimes the concerns behind those audits are that agencies didn't act appropriately in the way they handled bids—such as showing favoritism in awarding public contracts. Sometimes the concern is that bidders didn't act appropriately—such as rigging bid prices. If no records exist for part of the contracting process, I think public policy makers will be less able to carry out their oversight responsibilities.

I would be happy to try to answer any questions you may have.

Sen. Federal & State Affairs Comm.
Date: 2-19-98
Attachment: #1



DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
Landon State Office Building
900 S.W. Jackson — Suite 400-N
Topeka, Kansas 66612-1284
(913) 296-3317

Bill Graves
Governor

MEMORANDUM

DATE: February 19, 1998
TO: Senate Federal and State Affairs Committee
FROM: Charles E. Simmons
Secretary of Corrections
RE: SB 496

SB 496 amends the provisions of the Open Records Act pertaining to sealed bids and related documents. SB 496 addresses the situation where bids and proposals solicited by a public agency are neither accepted nor rejected. SB 496 clarifies that such bids and proposals remain closed records and requires those documents to be returned to the entity that submitted them.

The Department of Corrections supports the provisions of SB 496 relative to clarifying that bids and proposals that are not acted upon remain closed records. The Department recently issued a request for proposal involving the operation of correctional facilities. This request was contingent on the need for expanded prison capacity. That need, however, did not materialize and thus the proposals submitted were not acted upon. Two private firms that submitted proposals have expressed concern that such information could be made available to their competitors. The Department supports keeping those records confidential.

The Department, however, has a concern relative to the provisions of SB 496 requiring the return of all documents relating to the proposal to the entity that submitted the proposal. The return of those sealed documents would hinder the ability of the state to review whether the agency's decision to not act upon a proposal was in the state's best interests. If all of the materials relating to the proposals are returned, legislative post audit would be unable to review those materials. Additionally, the language of SB 496 is not clear as to whether documents prepared by the agency regarding the analysis of the bid would also be required to be sent to the bidder.

The Department has prepared proposed amendments that we believe address the concern of bidders regarding the release of proposals that are not acted upon, while at the same time retaining those records so that a review of the agency's decision to not act upon proposals could be conducted.

CES/TGM/jm

w/attachment

cc: Legislative file w/attachment

Sen. Federal & State Affairs Comm.
Date: 2-19-98
Attachment: #2

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1 attorney.

2 (26) Records of a utility or other public service pertaining to individ-
3 ually identifiable residential customers of the utility or service, except that
4 information concerning billings for specific individual customers named
5 by the requester shall be subject to disclosure as provided by this act.

6 (27) Specifications for competitive bidding, until the specifications
7 are officially approved by the public agency.

8 (28) (A) Sealed bids and related documents, until a bid is accepted
9 or all bids rejected. ~~However, if the bids are not rejected and are not acted~~
10 ~~upon by the public agency, the public agency shall return to the entity~~
11 ~~who issued such bid the bid and related documents in its entirety. Any~~
12 ~~copies of such documents shall also be returned.~~

Additionally,

bids

13 (B) Responses to request for proposals and related documents, until
14 a contract is executed or all proposals are rejected. ~~However, if the pro-~~
15 ~~posals are not rejected and are not acted upon by the public agency, the~~
16 ~~public agency shall return to the entity who issued such response the~~
17 ~~response to the request for proposals and related documents in its entirety.~~
18 ~~Any copies of such documents shall also be returned.~~

shall remain confidential

Additionally,

responses

19 (29) Correctional records pertaining to an identifiable inmate or re-
20 lease, except that:

21 (A) The name; photograph and other identifying information; sen-
22 tence data; parole eligibility date; custody or supervision level; disciplinary
23 record; supervision violations; conditions of supervision, excluding
24 requirements pertaining to mental health or substance abuse counseling;
25 location of facility where incarcerated or location of parole office main-
26 taining supervision and address of a releasee whose crime was committed
27 after the effective date of this act shall be subject to disclosure to any
28 person other than another inmate or releasee, except that the disclosure
29 of the location of an inmate transferred to another state pursuant to the
30 interstate corrections compact shall be at the discretion of the secretary
31 of corrections;

shall remain confidential

32 (B) the ombudsman of corrections, the attorney general, law enforce-
33 ment agencies, counsel for the inmate to whom the record pertains and
34 any county or district attorney shall have access to correctional records to
35 the extent otherwise permitted by law;

36 (C) the information provided to the law enforcement agency pursu-
37 ant to the sex offender registration act, K.S.A. 22-4901, et seq., and
38 amendments thereto, shall be subject to disclosure to any person, except
39 that the name, address, telephone number or any other information which
40 specifically and individually identifies the victim of any offender required
41 to register as provided by the Kansas offender registration act, K.S.A. 22-
42 4901 et seq. and amendments thereto, shall not be disclosed; and

43 (D) records of the department of corrections regarding the financial

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Design • Construction • Financing • Management

November 21, 1997

Committee Member
Joint Committee on Corrections and Juvenile Justice Oversight
State Capitol 112-S
Topeka, Kansas 66612-1504

**RE: Recent Request for Proposal for Design, Construction and
Operation of Either a 200 Bed or 400 Bed Correctional Facility**

Dear Committee Member:

Our company has closely monitored correctional issues in Kansas for the past three years. This effort has included attending various legislative hearings, meetings with elected officials and Department of Corrections officials. The agenda has been to present an overview of correctional privatization benefits.

During the past legislative session, I testified on three separate occasions, covering prison privatization on a more comprehensive basis. As a result of these meetings, we were aware of the "Kansas climate" surrounding prison privatization.

When we learned Richard Crane had been engaged as your consultant and a Request for Proposal (RFP) was imminent, we were very pleased and anxious to compete for your business. However, we were very disappointed when the RFP arrived and we noted:

- The Department of Corrections would be evaluating the proposals, as well as serving their own purpose by proposing to expand existing facilities, thus negating the need for the privatized beds. This presented a direct conflict of interest.
- The proposed contract was subject to Termination for Convenience.
- The proposal was due on August 20, 1997. We received the proposal in our offices on July 11, 1997. Thus, we had only five weeks to prepare a very comprehensive document.

Executive Offices

4200 Wackenhut Drive #100 • Palm Beach Gardens, Florida 33410-4243

Tel (561) 622-5656 • (800) 666-5640

Fax: Operations (561) 691-6653 • Business Development (561) 691-6659 • Business Management (561) 691-6740

Sen. Federal & State Affairs Comm.

Date: 2-19-98

Attachment: # 3

Committee Member

November 21, 1997

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After reviewing the RFP, I had serious concerns as to the wisdom of committing the required resources to comply with the extensive RFP requirements in a time frame, which appeared artificially short. However, based on the meetings we had attended and our sense of commitment from the State, as well as representation we had made, and our commitment to Kansas, we chose to proceed. Subsequent to this decision, we:

- Assembled a proposal team including
 - General Contractor
 - Architects
 - Engineers
 - Investment Banker
 - Legal Counsel
 - Public Policy Advisor
- Identified a site in host community, optioned it for purchase, surveyed it, and completed preliminary geotechnical drillings.
- Held necessary public meetings to assure public support.
- Designed the prison and prepared all necessary architectural drawings and renderings.
- Prepared and reviewed all engineering studies to assure availability of required utilities.
- Prepared a comprehensive construction and development guaranteed cost proposal.
- Prepared a comprehensive plan of finance.
- Obtained required insurance, and performance and payment bonds.

In doing so, we expended well over \$150,000 in out-of-pocket costs and human resource expense. We instructed our Development staff to work 12-hour shifts, including Saturdays and Sundays. During this process, we received the same level of commitment from the other members of our team, all of whom made valuable contributions to our effort. This is especially true of the representatives from Yates Center, who invested untold effort in serving as our partner for this proposal. The proposal was completed and we are quite proud of its quality. To submit it prior to the close of the submittal period, we hand carried our proposal to Topeka, and personally delivered it.

Committee Member
November 21, 1997
Page 3

During the final preparation days, prior to the submittal, we saw media coverage of the Department of Corrections' statement that *there had been an error in estimates of bed requirements and more space may not be needed*. Needless to say, this impeded our progress.

Given the combination of circumstances and events, we were not surprised when we learned our proposal was the only creditable submittal. None of our competitors chose to prepare a proposal. We have awaited information about award of the contract and received none.

In spite of our frustration, we remain committed to the effort by the Kansas Legislature, and trust the events have demonstrated our ability to perform. We look forward to advancing our proposal and developing and operating the first of many privatized correctional facilities for the State of Kansas.

We request that our proposal remain confidential until such time as an award is made. It would prejudice us greatly if this information were released.

Sincerely,



Charles R. Jones, Senior Vice President
Business Development

CRJ:ceb

Printed Name/Committee Member



Testimony In Support Of SB 496

On Behalf Of

Kelley Detention Services, Inc.

John J. Federico

Committee On Federal & State Affairs

February 20, 1998

Kelley Detention Services, Inc. submitted a response to the Department of Corrections Request For Proposals, before they decided that no contracts will be awarded. We believe that in those rare circumstances where an RFP is not acted upon, the responses should be returned to their owners. The reasons for this are many, including the fact that they contain trade secrets which in a competitive bidding process, could be detrimental to our business.

We support SB 496 and feel that its passage would protect the legitimate interests of future potential bidders.

JJF:nh



League of
Kansas
Municipalities

Legal Department
300 S.W. 8th
Topeka, Kansas 66603
Phone: (785) 354-9565/ Fax: (785) 354-4186

TESTIMONY

TO: Senate Federal and State Affairs Committee
FROM: Don Moler, General Counsel
DATE: February 19, 1998
RE: Opposition to SB 496

First of all I would like to thank the Committee for allowing the League to appear today in opposition to SB 496. We are opposing the bill for several reasons, the most significant is we do not believe it to be necessary. Essentially, the fact that there has been a problem in one place at one time in the State of Kansas should not necessitate a modification to a statute which has implications for all cities, counties and other local governments in the State of Kansas.

We also believe there is a functional problem with the way the bill is devised in that if bids are not rejected and are not acted upon by the public agency that the public agency must return the bid and related documents in their entirety including all copies of such documents. This would also apply to responses to requests for proposals and related documents and copies of those proposals. The functional problem is very simple. Often bids are opened by a city manager, city administrator or city clerk and that officer then devises a comparative table or summary sheet for the review of the governing body along with the original bids or documents for request for proposal. These are then distributed to the governing body in their informational packets which are often sent out the week before the actual meeting.

The League would submit that once the documents leave the hands of the official who originally collected them, that the ability of the city to: (1) Return all documents and copies to the original bidder or responder to a request for proposal is small at best and may not be possible at all; (2) The very fact that the bids were reviewed by a number of people, it would seem highly unlikely that the records could be kept closed given the fact that they were distributed beyond the initial officer receiving the bids.

The League therefore sees there are both policy and functional reasons why this legislation should not go forward and we would respectfully ask that the Committee to not favorably report SB 496.

Sen. Federal & State Affairs Comm.
Date: 2-19-98
Attachment: #5



City of Wichita

Testimony

By Mike Taylor, Government Relations Director

SENATE BILL 496

DELIVERED TO
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
FEBRUARY 19, 1998

This bill amends the Kansas Open Records Act dealing with bids and Request for Proposals. It would require that all bids or Request for Proposals which are not rejected or acted upon be returned to the entity submitting it. It also would require that all copies of the bid or proposal also be returned.

The City of Wichita opposes Senate Bill 496 for the following reasons:

This is not an open records issue and has no place in the Kansas Open Records Act. The Open Records Act is a law created to help the public stay informed about what their government is doing. Currently, bids are exempt from public disclosure until all bids have been accepted or rejected. Once they are acted on, they are made available to the public, usually through media reports. Requiring a bid or proposal to be returned if it is not acted upon, has nothing to do with open records or keeping the public informed.

The provisions called for in Senate Bill 496 would put an unnecessary burden on a City. The City of Wichita solicits hundreds of bids and Request for Proposals every year. Most are acted upon. But for a variety of reasons, some bids and proposals are not. That doesn't mean they won't be followed up at a later date. Having to return the documents and all copies creates unneeded work for City officials. There will also be costs involved. Costs which must either be paid by taxpayers, or by the entity submitting the bid or proposal. This bill also implies that the City would be prohibited for keeping a copy of the documents for future reference.

Senate Bill 496 is proposed largely, if not exclusively, because of one incident involving one specific company. The City of Wichita questions whether it is sound public policy to change a state law which will affect hundreds of Cities, Counties and other public entities because of what appears to be one isolated concern.

Sen. Federal & State Affairs Comm.
Date: 2-19-98
Attachment: #6



DEPARTMENT OF ADMINISTRATION
Division of Purchases

BILL GRAVES
Governor

DAN STANLEY
Secretary of Administration

JOHN T. HOULIHAN
Director of Purchases
900 S.W. Jackson, Room 102-N
Landon State Office Building
Topeka, KS 66612-1286
(785) 296-2376
FAX (785) 296-7240

MEMORANDUM

DATE: February 19, 1998
TO: Senate Federal and State Affairs Committee
FROM: John T. Houlihan *John T. Houlihan*
RE: S.B. 496

S. B. 496 amends the public records act pertaining to sealed bids and related documents. The amendment requires the public agency to return bids and related documents to the issuing entity if the bids are not acted upon. The proposed purpose of the bill is to protect the confidentiality of proposals that have not been accepted or rejected. Upon advice of legal counsel, I believe that the current public records act already provides this protection and therefore this amendment is not necessary. Under the current statute, sealed bids and related documents are not open to the public "... until a bid is accepted or all bids rejected." If a state agency does not act on a proposal, the agency has not accepted or rejected the proposal, therefore the confidentiality of the proposal is still protected under the bid exception to the public records act.

cc: Secretary Stanley

Sen. Federal & State Affairs Comm.
Date: 2-19-98
Attachment: # 7