

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on March 14, 2000, in Room 245-N of the Capitol.

All members were present except: Senator Steineger

Committee staff present: Dennis Hodgins, Legislative Research Department  
Mike Heim, Legislative Research Department  
Ken Wilke, Revisor of Statutes  
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Senator Tim Emert  
Dan Hermes, Director of Governmental Affairs, Governor's Office  
Kevin Robertson, President, Kansas Society of Association Executives  
John Houlihan, Dept. of Adm., Division of Purchases  
Dean Carlson, Secretary of Transportation  
Linda DeCoursey, Director of Gov. Affairs, Insurance Department (written testimony)  
Linda Wood, Kansas Development Financed Authority

Others attending: See attached list

Chairman Hardenburger opened the hearing on **SB 389 concerning the capitol; relating to memorial for Kansas firefighters on the capitol grounds; prescribing certain powers, duties, functions, guidelines and procedures; advisory committee.** She informed the Committee that the bill was passed before in Committee, which provided guidelines and procedures for placing monuments on the Capitol grounds, and it was changed substantially in the House Committee of the Whole.

Senator Emert said that **SB 389** in its original form, passed out of the Senate Committee on Elections and Local Government and also out of Senate Committee of the Whole 40 - 0, which defined a standard procedure for placement of monuments could be placed on the Capitol grounds. When the bill went to the House Committee of the Whole, it was gutted and in its place was substituted 1999 **SB 72** which had passed the Senate body 36- 4, approval of the Firefighters memorial. Senator Emert presented amendments to the Committee. (Attachment #1)

The Committee discussed when this memorial would be erected, and Senator Emert advised the Committee that there is no time limit on it.

Seeing no opposition to the bill, Chairman Hardenburger closed the hearing on **SB 389.**

Senator Lawrence moved to adopt the amendment to SB 389, seconded by Senator Becker. Motion carried.

Senator Praeger moved to pass out favorably SB 389 as amended, seconded by Senator Lawrence. Motion carried.

Chairman Hardenburger opened the hearing on **HB 2627 concerning state officers and employees; concerning governmental ethics; and repealing the existing sections,** also a bidding process that was added to the bill in the House.

Legislative staff briefed the Committee on **HB 2627,** which amends the State Governmental Ethics Laws to add a prohibition for soliciting and receiving certain gifts and services by certain state employees and to add additional disclosure reporting requirements by lobbyists, and requiring competitive bids on certain professional and consulting services.

## CONTINUATION SHEET

The Committee discussed disclosure from an Internet web sight.

Senator Becker presented an amendment on **HB 2627**, which would report all gifts, entertainment or hospitality of any value accepted by any legislator. (Attachment #2)

Dan Hermes, Director of Governmental Affairs, Office of the Governor, presented to the Committee, proposals as it was introduced on behalf of the Governor, which would extend the current gift and hospitality ban to all unclassified employees in the executive branch. The current ban applies only to classified employees and unclassified employees under the direct control of the Governor. (Attachment #3)

The Committee discussed the gift ban, who is covered, and who has to report.

Kevin Robertson, President of the Kansas Society of Association Executives, informed the Committee that the members of the KSAE have a broad array of job responsibilities of various departments, such as Director's of Education, Governmental Affairs, etc. The Board believes that since all lobbyists are currently required to track their expenses for the existing reports, the addition of such an itemized report would not be overly burdensome, with the technology of today. (Attachment #4)

John Houlihan, Director of Purchases, presented testimony in opposition to **HB 2627** as it concerns competitive bidding. He said the goal of ensuring competition in obtaining professional services can be accomplished under existing laws. This bill would require development of an entire procurement system for professional services, separate and distinct from the primary procurement system administered by the Director of Purchases. (Attachment #5)

Dean Carlson, Secretary of Kansas Department of Transportation, in testifying in opposition to the bill, told the Committee that **HB 2627** among other things, would require competitive bid process within all state agencies for professional and consulting contracts not otherwise excluded by law. The bill would have a reverse impact. (Attachment #6)

Linda DeCoursey, Director of Government Affairs presented written testimony to the Committee in opposition to **HB 2627**, which referred to section one of the bill only which prohibits acceptance of anything of value by unclassified employees. (Attachment #7)

Linda Wood, Kansas Development Finance Authority, told the Committee that the KDFA are in opposition to this bill, as they do not want to be the State's "contract czar". (Attachment #8)

Chairman Hardenburger closed the hearing on **HB 2627**, and appointed a sub-committee, chaired by herself and with Senator Praeger and Senator Steineger.

Meeting was adjourned at 2:30 p.m. Next meeting is scheduled for March 15, 2000.

# ELECTIONS & LOCAL GOVERNMENT COMMITTEE GUEST LIST

DATE: MARCH 14, 2000

NAME	REPRESENTING
Bill Groth	State house ARCH
Rita NON	ALSF
Ronald Hillis	Children & Family Policy
Mike Strubert	Fr. CO. Farm Bureau
Jack Wray	Fr Co Farm Bureau
Judy Geor	Am Inst of Architects
Brad Bryant	Sec. of state
Vera Gannaway	GEC
Carol Williams	GEC
Pat Rehman	KS Fire Service Alliance
JIM KEATING	KS AFC
Eric Gilliland	
PHIL GILLILAND	CLONOCORP / CNB
Jerry Garcia	THANKFUL Deceased
Don Morris	<del>DOT</del>
Dean Carlson	KDOT
Bill Watts	KDOT
Nancy Bogina	KDOT

PROPOSED AMENDMENTS TO SB 389  
(as amended by House Committee of the Whole)

Be amended:

On page 3, in line 28, by striking all after "on"; in line 29, by striking "state capitol" and inserting "state property within the state capitol plaza area"; in line 39, after the period, by inserting: "The memorial for Kansas firefighters is subject to the provisions, procedures and approvals required under sections 2 through 6, and amendments thereto, except that such memorial for Kansas firefighters is hereby authorized by the legislature for purposes of subsection (b) of section 5, and amendments thereto.";

On page 5, after line 32, by inserting the following:

"Sec. 3. (a) The secretary of administration shall review the historic structure report on the capitol and shall develop and maintain a preservation plan for the capitol grounds. In addition, the secretary of administration shall develop guidelines and standards for memorials on the grounds of the capitol. All guidelines and standards for memorials on the grounds of the capitol shall be consistent with the statement of purpose and use for the capitol grounds and shall be designed to:

(1) Ensure the subjects of memorials are of historic and lasting significance for Kansas;

(2) ensure the design excellence of all memorials on the grounds of the capitol;

(3) preserve, protect and enhance the limited amount of available space on the capitol grounds;

(4) preserve and further the implementation of the long-range plan of development for the capitol area;

(5) ensure that memorials proposed for the grounds of the capitol are appropriately planned, designed and sited and are reviewed, funded and constructed in a timely manner;

(6) ensure that adequate and appropriate opportunities are provided for the involvement of or comment by interested members of the public throughout the development of the proposal for the memorial; and

(7) ensure that individuals, groups and organizations have a clear understanding of the process that must be completed in order to propose and to have a memorial constructed or placed on the grounds of the capitol.

(b) After advising and consulting with the state historic preservation officer of the state historical society, the legislative coordinating council and the heads of other state agencies with offices located in the capitol, the secretary of administration shall recommend guidelines and standards for memorials on the grounds of the capitol to the capitol area plaza authority. After receipt of such guidelines and standards, the capitol area plaza authority shall review and consider such guidelines and standards. If the authority approves of the proposed guidelines and standards, the authority shall adopt the proposed guidelines and standards for memorials on the grounds of

the capitol. If the authority does not adopt the recommended guidelines and standards or any amendments thereto, the authority shall make recommendations to the secretary of administration for amendments or additions to the proposed guidelines and standards or any amendments thereto.

(c) In the same manner, the secretary of administration may propose and recommend amendments or additions to the guidelines and standards for memorials on the grounds of the capitol for consideration by the capitol area plaza authority.

Sec. 4. (a) No memorial shall be constructed or placed on the grounds of the capitol except in accordance with the procedures and subject to the conditions and limitations prescribed by this act. Each proposal for a memorial to be constructed or placed on the grounds of the capitol shall be consistent with the statement of purpose and use adopted for the grounds of the capitol and shall be subject to the guidelines and standards for memorials on the grounds of the capitol adopted by the capitol area plaza authority.

(b) In addition to other requirements or provisions of law applicable thereto, each proposal for a memorial to be constructed or placed on the grounds of the capitol shall be submitted to the secretary of administration for consideration in accordance with this act. Prior to being adopted or rejected by the secretary of administration, each such proposal shall be submitted to and reviewed and considered by the following officials:

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(1) The state historic preservation officer of the state historical society;

(2) the director of facilities management of the department of administration; and

(3) the director of legislative administrative services.

(c) The secretary of administration shall receive and consider the recommendations from the state historic preservation officer of the state historical society, director of facilities management of the department of administration and director of legislative administrative services regarding any such proposal prior to adopting any recommendation regarding such proposal. After review and consideration of the recommendations from each such official, the secretary of administration may approve or reject the proposal. If the secretary of administration recommends approval of any such proposal, the secretary shall submit the proposal to the capitol area plaza authority for consideration by the authority.

(d) Each memorial proposed to be constructed or placed on the grounds of the capitol that is recommended by the secretary of administration shall be presented to the capitol area plaza authority. If any such proposal is approved by the capitol area plaza authority, such proposal shall be submitted to the governor and the legislative coordinating council for appropriate action.

Sec. 5. (a) The primary considerations as to whether a proposed memorial is approved for the capitol grounds shall be the significance and relevance of any memorial proposed to be

constructed or placed on the grounds of the capitol and the extent to which the proposed memorial complies with the requirements of, is consistent with and furthers the purposes and implementation of the preservation plan for the grounds of the capitol and the guidelines and standards for memorials on the grounds of the capitol.

(b) No memorial shall be constructed or placed on the grounds of the capitol without specific authorization for such memorial by act of the legislature.

Sec. 6. As used in this act, "memorial" means any permanent commemorative plaque, monument, sculpture, statuary, work of art or other object, structure or capital improvement project, but does not include construction or maintenance of walkways or roadways or any landscaping, landscape gardening or other maintenance or development of the capitol grounds unless such project or activity is specifically for commemorative purposes.";

And by renumbering the remaining section accordingly;

In the title, in line 12, by striking all after "the"; in line 13, by striking all before the semicolon and inserting: "state capitol area; relating to memorials"; in line 14, after the semicolon, by inserting: "memorial for Kansas firefighters and"; and the bill be passed as amended.



**SENATOR RICH BECKER**

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
VICE CHAIRMAN: • ELECTIONS AND LOCAL GOVERNMENT  
MEMBER: • FEDERAL AND STATE AFFAIRS  
• FINANCIAL INSTITUTIONS AND INSURANCE  
• PUBLIC HEALTH AND WELFARE  
• HEALTH CARE REFORM LEGISLATIVE OVERSIGHT  
• JOINT COMMITTEE ON CORRECTIONS & JUVENILE JUSTICE OVERSIGHT

**From: Senator Rich Becker****Re: House Bill 2627 as amended**

The media has done a wonderful job of creating the perception that legislators in general are totally dishonest. The bottom line of this bill is that we legislators are being bought. As a person who has served in public office for a number of years, I'm highly insulted with this perception that my votes can be bought by someone buying me a cup of coffee or a meal or some chips and dip.

If everybody is so concerned that we're all being bought, I propose that all lobbyists be allowed to spend as much as they wish on legislators. Spend as much as they wish on hospitality, recreation, gifts, pens, pencils, mugs, donuts, muffins, ice cream, candy bars, coffee, snacks, popcorn, pizza, soft drinks, hard drinks, beer, root beer, eye glass cleaner, flowers, cookies, bumper stickers, refrigerator magnets, candies, fruit, pins, toothpaste, toothbrushes or note pads etc. etc. etc.

BUT, that every single penny be accounted for by the lobbyist as to what legislator received how much and that those dollar figures be reported.

I'm sick and tired of my honesty and integrity being questioned, and therefore I offer the following amendment:

**Delete line 43 on page 4**

**Delete all of page 5 except lines 10 to 21**

**all of page 6 and lines 1 to 41 on page 7**

**Add: Each lobbyist shall report ALL gifts, entertainment or hospitality of any value accepted by any legislator. Such report shall disclose the full name of the Legislator who received such gift, entertainment or recreation and a form be submitted by the lobbyist to that legislator within 10 days of the date that that gift, hospitality or entertainment was received by the legislator. The form, provided by the ethics commission, will indicate the exact dollar amount of the gift, entertainment or hospitality that the legislator received. On the form will be a place for the Legislator to sign signifying that he or she did in fact receive the entertainment, gift or hospitality and that the dollar figure is correct. Also, there will be a space on the form to indicate that a gift was not accepted, as well as a space to indicate that the legislator does not agree that the dollar figure indicated on the form is accurate. The ethics commission shall be the arbitrator in the cases of disagreements. The legislator must return the signed or unsigned forms to the lobbyist within 10 days after receiving the form.**

**These forms signed by both the lobbyist and the legislator shall be filed with the ethics commission along with their regular lobbyists reports**

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# STATE OF KANSAS

BILL GRAVES, *Governor*  
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## OFFICE OF THE GOVERNOR

### LEGISLATIVE TESTIMONY

TO: Chairperson Janice Hardenburger and Members of the Senate Committee on Elections and Local Governmental

FROM: Dan Hermes, Director of Governmental Affairs

DATE: March 14, 2000

SUBJECT: HB 2627

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Madam Chair and members of the committee, thank you for the opportunity to appear to discuss the Governor's proposal to strengthen state ethics laws in Kansas. I am here today to address the proposal as it was introduced on behalf of the Governor. A representative of the Department of Administration is here today to address the component of the bill added on the House floor that relates to state contracting procedures for professional services.

The bill, in current form and as introduced, would extend the current branch gift and hospitality ban to all employees in the executive branch. The current ban applies only to classified employees and unclassified employees under the direct control of the Governor. The threshold for determining if the unclassified employee is under the direct control of the Governor is whether he sets or approves their salaries. This would extend the ban to unclassified employees of the Board of Regents, Board of Education, KPERS, Insurance Commissioner, State Treasurer, Attorney General and Secretary of State. Roughly 90 percent of the unclassified employees in the state are not currently covered by the gift ban.

The bill as it was introduced would provide that lobbyists report the individuals that are provided gifts and hospitality. As you know, the previously mentioned ban that is in place does not impact the legislative or judicial branch. This proposal does not preclude gifts and hospitality -- it only requires disclosure for the legislative and judicial branch. This provision was replaced on the House floor with a version that required reporting by legislators.

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Kansans overwhelmingly support some change in the law that allows special interest groups to provide state officials with free entertainment. In a poll conducted on behalf of the Governor in December, 83 percent favored a change in the law to restrict these activities. This bill represents only a small step – assuring that citizens have access to information about who is providing gifts and hospitality to who. As the Governor said in his state of the state address, “The people of Kansas deserve government that avoids even the appearance of improper conduct.”

It is important here to note the exemptions to both the ban for executive branch employees and the reporting requirements for the legislative and judicial branch as it relates to hospitality. The exemptions are:

- meals from family of friends
- meals where the entire legislature or the entire House or Senate were invited
- meals provided for someone appearing in an official capacity
- food such as soft drinks, coffee or snack foods not offered as part of a meal
- meals when it is clear it does not relate to a person’s official position

I hope that the committee will act favorably on the provisions of the bill in the introduced form and would be happy to respond to any questions.

Date: March 14, 2000

To: Senate Committee on Elections and Local Governmental

From: Kevin J. Robertson, CAE  
President



RE: HB 2627

Senator Hardenburger and members of the Committee, I am Kevin Robertson, Executive Director of the Kansas Dental Association, today I am appearing before you in my capacity as President of the Kansas Society of Association Executives (KSAE). KSAE is a society consisting of 171 professional and trade association staff. These members have a broad array of job responsibilities from Executive Directors and Executive Vice Presidents to heads and staff of various departments such as Director's of Education, Governmental Affairs, etc. A majority of these members are employed by, or contract with, trade or professional associations that are active participants in the Kansas Legislative process. KSAE also has a Legislative Agent membership category of 47 members who are largely corporate and contract lobbyists. As you can see, the members of KSAE are keenly interested in HB 2627.

The KSAE Board of Directors has discussed the ramifications of HB 2627 on the KSAE membership, the position that the KSAE should take, and the Society's message to the Legislators. Though we all agreed that the paperwork for the original bill regarding the proposed reports would be an added burden, the Board believes that since all lobbyists are currently required to track their expenses for the existing reports, the addition of such an itemized report would not be overly burdensome. Further, technology today makes it a rather simple exercise to record and retrieve such data. I know in my case, I would simply add a column in my Excel program where I currently record my legislative spending after a meal or other lobbyist expense.

I am sure there are KSAE members that are opposed to additional reporting of any kind. Some believe that the introduction of HB 2627 fuels the perception that lobbying is being conducted in Kansas "under the table" with lavish gifts and favors. Introduction of bills like these add to the public's belief that there is a major influence problem in Kansas that needs correcting. KSAE believes that lobbying in Kansas is currently above board, to our knowledge our members are in compliance with current laws, and those members will continue to provide the required information to the Secretary of State in the future remain in compliance with the law.

The House Committee amendments to the bill helped to clarify many of the early concerns with the bill. I would, however, suggest two amendments to the bill. First, the KSAE as some members do hold events for members of a particular Congressional District, I would ask that the definition of "widely attended" include members of a Congressional District." Secondly, I would suggest that there should be some thought given to creating a per person dollar "minimum" per reporting period for each legislator before the itemization would be triggered. This would be true whether the lobbyist or legislators themselves were filing the report. This minimum could be set anywhere you would like-perhaps \$50-100. It seems that the itemization is meant as a way to attempt to track legislators or lobbyists that are abusing (what ever that is) the system. I don't believe the public is concerned about an \$8 dollar lunch, but, maybe they would be concerned about a \$100 lunch or 13 \$8 lunches.

Let me conclude by saying it is up to the legislature to determine the necessary reporting to adequately protect the public. Perhaps such itemized reporting as contained in HB 2627 will, finally, put the minds of the public at ease. I will be happy to answer any questions you may have.

Senate Elections & Local Government

Date: 3-14-00

Attachment # 4



**DEPARTMENT OF ADMINISTRATION**  
Division of Purchases

**BILL GRAVES**  
*Governor*

**DAN STANLEY**  
*Secretary of Administration*

**JOHN T. HOULIHAN**  
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**COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT**  
**TESTIMONY ON HOUSE BILL NO. 2627**  
**MARCH 14, 2000**

Presented by John T. Houlihan  
Director of Purchases

Madam Chair and members of the committee. I am John Houlihan, Director of Purchases. Thank you for the opportunity to speak on behalf of the Department of Administration in opposition to Section 5 and the amendments to K.S.A. 75-3738, 75-3739, and 75-3740. I will address only the procurement aspects of the bill.

House Bill No. 2627 requires the Kansas Development Finance Authority (KDFA) to adopt regulations establishing guidelines for awarding professional services contracts. The responsibilities assigned to the KDFA are not well-suited to that agency, as its expertise relates to financing rather than procurement law or other types of professional services. At this time, the KDFA Board meets once monthly, typically for two to three hours each meeting. The Board members are appointed by the Governor and receive no compensation for their services. Currently, the Board is comprised of three members who reside in Wichita, one member residing in Kansas City and one Topeka resident. As all the current Board members are active professionals working in demanding careers, it is sometimes difficult to achieve a quorum for even the monthly meetings. Adoption of this legislation would require more frequent, lengthier meetings of the KDFA Board to allow sufficient time to review and approve contracts. This bill would be extremely unwieldy and costly to implement, and substantial additional resources would be required for a board with a small staff to make such awards on an on-going basis.

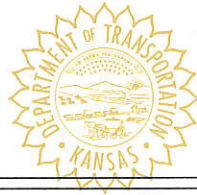
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Presently, the Director of Purchases has statutory responsibility for the acquisition of all professional services. K.S.A. 75-3738 states in part that... "The Director of Purchases shall purchase, rent or otherwise provide the furnishing of supplies, material, equipment or contractual services for all state agencies." In addition, K.S.A. 75-3739 states in part that... "all contracts for construction and repairs, and all purchases of and contracts for supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required ...when in the judgment of the Director of Purchases, no competition exists." House Bill 2627 goal of ensuring competition in obtaining professional services can be accomplished under existing laws. This bill would require development of an entire procurement system for professional services, separate and distinct from the primary procurement system administered by the Director of Purchases.

Presently, professional services are defined in the bill as "licensed or regulated under the laws of the state of Kansas". This includes such diverse occupations as pesticide applicators, attorneys, barbers, accountants, bankers, teachers, underwriters, etc. Currently, most of these services are being acquired by 1) direct purchase if less than \$2,000, 2) sole source, if no competition exists, 3) competitive sealed bids, and 4) competitive sealed proposals. For example, most small purchases such as barbers are by direct purchase. Some doctors and attorneys are sole source, pesticide applicators are by sealed bid, and accountants, banking services, consultants, etc. by competitive sealed proposals.

Under the bill, it will be necessary to develop detailed, comprehensive specifications in order to obtain qualified, competent professionals. However, it is often difficult to develop meaningful specifications for professional services. Adequate, meaningful specifications for professional services are much more difficult to develop than specifications for supplies, materials, and equipment. For example, it is difficult to specify the quality of professional services in a manner that can be quantified or verified. If this bill is adopted, the state would need to develop a very detailed list of requirements for each project in an attempt to get a firm that would be qualified for the work.

This concludes my prepared testimony, are there any questions?



**KANSAS DEPARTMENT OF TRANSPORTATION  
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E. Dean Carlson  
Secretary of Transportation

Bill Graves  
Governor

**TESTIMONY BEFORE  
SENATE ELECTIONS & LOCAL GOVERNMENT COMMITTEE**

**REGARDING HOUSE BILL 2627  
GOVERNMENTAL ETHICS  
MARCH 14, 2000**

Madam Chairperson and Committee Members:

I am Dean Carlson, Secretary of the Kansas Department of Transportation. On behalf of the Department, I am here today to testify on House Bill 2627 regarding consulting and professional services contracts.

HB2627 amends the state governmental ethics law to, among other things, require a competitive bid process within all state agencies for professional and consulting contracts not otherwise excluded by law.

Impact in General

Sections 5 through 9 are a duplication of Senate Bill 563, which makes all contracts for professional or consulting services subject to Kansas Development Finance Authority (KDFA) rules and regulation. These sections would impose additional purchasing direction on the Agency from other than the Division of Purchases. This will only compound the confusion of an already rule-intensive procurement law. It will become more difficult to distinguish the proper procedure and who the authority is on a given transaction. Some purchases that are exempted out by another statute will fall subject to this law if acquired under emergency provision. Purchases made under delegated authority will fall subject to interpretation or guidance from mutually exclusive oversight. Examples of contracts that will require action by KDFA will include: accountants, doctors, nurses, and the various technical trades such as electricians and plumbers, chemical applications, expert witnesses, and low bid awards for consultants.

Since there is no provision for KDFA to delegate purchasing authority it is assumed that all these service areas currently acquired under delegated purchases authority would be handled by KDFA.

**Senate Elections & Local Government**

**Date:** 3-14-00

**Attachment #** 6

### Legal Services

The competitive bidding for legal services would degrade the ability to obtain needed services (particularly specialized) and may result in less efficient delivery of those services. In situations where specialized services are needed from persons known to be "expert" in the field of concern, obtaining expertise through competitive bidding would be highly problematical. In addition, these needs often are time sensitive and require immediate response - two factors not likely to be enhanced by competitive bidding. In addition, the best providers may well not engage in a competitive bid process.

### Appraisal/Acquisition Services

Appraisers, negotiators, relocation specialists, foresters, and oil and gas experts are examples of the private sector services required for the acquisition of property interests needed for highway improvement projects. Expert's advice to staff appraisers relating to replacing fencing, replacing septic systems, drilling of water wells, and many other cost-to-cure items are needed to provide landowner with offers of just compensation.

This bill would add another layer of bureaucratic regulation to the process and would lengthen the timeframe needed to obtain services from the private sector. If contracts are to be awarded only to the low bidder, quality could suffer. KDOT's ability to deliver a quality product on schedule could be significantly diminished.

### Engineering/Land Surveying Services

Current law provides for a prequalification and negotiated selection process for engineering and land surveying services. Since this bill begins by stating new provisions are applicable "unless otherwise provided by law" our assumption is that these services will continue to be acquired without change. We will continue to acquire services under that assumption.

### Summary

In summary the Kansas Department of Transportation does not support the modification to the current purchasing process. While well intended the bill would, in a majority of the cases, have a reverse impact. If there is a problem with current procedures, the solution needs to be something other than detailed specifications and awarding contracts by the lowest dollar bid.





**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**

TO: Senate Committee on Elections and Local Government  
FROM: Linda De Coursey, Director of Government Affairs  
RE: HB 2627 – Governmental ethics, establishing requirements on gifts and hospitality  
DATE: March 14, 2000

Madame Chair and members of the Committee:

Thank you for allowing us this opportunity to submit our comments to you in writing on HB 2627. I would like to make clear that our comments regarding HB 2627 are on section one of the bill only.

Several years ago, the Legislature passed HB 2064, which enacted language regarding lobbying, contracts, revolving door for employment of state employees, and Governor Graves's requested gift ban for all classified employees in the civil service and the governor, the lieutenant governor, the governor's spouse, and unclassified employees in the executive branch.

Upon passage of that legislation, Insurance Commissioner Sebelius decided that all Kansas Insurance Department (KID) employees should be under the same rules as other state employees. She requested full compliance with the law for KID employees. I have attached a memo written by the general council of Kansas Insurance Department on that subject. In essence, all employees have been complying with law since July, 1997.

Commissioner Sebelius is delighted that Governor Graves gave ethics reform a high profile in his State of the State speech, and agrees whole heartedly that "the people of Kansas deserve government that avoids even the appearance of improper conduct." We urge your favorable consideration of section one of HB 2627.

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# MEMORANDUM

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DATE: July 1, 1997

TO: Commissioner Sebelius, Bob Kennedy, Tom Wilder, Kathy Greenlee, Rich Huncker, Marlyn Burch, Bill Wempe, Ed Mailen, Don Gaskill, Marty Kennedy, Jamesina Evans, Karen Wittman, Anne Haught, JaLynn Copp, Peggy Gatewood, Paula Greathouse, Damian Hornick

FROM: Brian J. Moline  
General Counsel

RE: Application of HB2064

Several KID employees have asked questions regarding application of HB 2064, which amends the state conflict of interest law effective today. Although the legislation technically may not apply to KID employees, the Commissioner has determined that KID employees should be under the same rules as other state employees and full compliance with the new law is expected.

The essence of HB 2064 is that it removes the \$40 threshold for all state employees, classified or unclassified, on soliciting or receiving anything of value in their official position. The key provision is New Sec. 4(a)(6)(b):

No person subject to the provisions of this section shall solicit or accept any gift, economic opportunity, loan, gratuity, special discount or service provided because of such person's official position.

The bill lists several exemptions to the general provisions:

- Those with an aggregate value of less than \$40.00 given at a ceremony or public function to a person accepting the gift in that person's official capacity. An example would be a speaking engagement where a coffee cup, inexpensive calculator or ball point pen is presented as an honorarium;
  - Those given by friends not associated with a person's official position. But where the personal friend interacts with the employee in their official position, the exemption would not apply;
  - Those received on behalf of the state that become state property;
- and
- Contributions solicited on behalf of a tax exempt non-profit organization.

Senate Elections & Local Government  
Date: 7-14-00  
Attachment # 7-2

## MEALS

Solicitation or acceptance of free or discounted meals outside state government is prohibited except where:

- Meals are provided by personal friends or family members. But where the personal friend interacts with the KID employee in an official capacity, the exemption would not apply;
- Meals provided at a widely attended event. A widely attended event is described as an occasion at which it is obvious that the motivation for providing the meal is not to gain exclusive access to a state official. An example would be the annual reception held by the Kansas Independent Insurance Agents. The reception is a widely attended event including legislators, other state officials, numerous Independent Agents and KID employees. On the other hand, a small lunch or dinner between industry representatives and KID personnel would not be a widely attended event;
- Meals provided at public events attended as part of official business;
- Soft drinks, coffee, and snack foods which are not part of a meal.

Remember the prohibition applies only to the solicitation or acceptance of the free or discounted meal. KID employees may dine at any time with anyone they desire when they pay for their own meal, drinks or recreation.

Solicitation or acceptance of free or special discounted travel or associated expenses from a source outside state government is prohibited unless the travel given is not associated with a person's official position (e.g. an employee's non-job related avocation such as coaching, teaching and the like), or unless the person's presence serves a legitimate state interest and is authorized by that person's state agency. An example would be participation in a panel discussion or presentation of a paper at an industry sponsored event where the agency approves free or discounted expenses. The exemption would not extend to an honorarium or prize where the aggregate value is more than \$40.

Soliciting or accepting fee or discounted tickets or access to entertainment, recreation or sporting events is prohibited unless a person's official state position requires them to attend the event. For example, free or discounted green fees at a golfing occasion where KID employees and industry representatives are present. However, such an occasion could become a "widely attended event" and thus permissible.

Any close questions will be addressed upon written request to the Kansas Commission on Governmental Standards and Conduct.

**Division Heads are requested to share this memorandum with KID employees.**

**TESTIMONY OF KANSAS DEVELOPMENT FINANCE AUTHORITY  
REPRESENTED BY CHIEF FINANCIAL ANALYST LINDA WOOD  
TO THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT  
REGARDING HOUSE BILL 2627 OF THE 2000 LEGISLATIVE SESSION,  
AS AMENDED BY THE HOUSE COMMITTEE OF THE WHOLE  
PRESENTED MARCH 14, 2000**

Madam Chair and Honorable Members of the Committee, Kansas Development Finance Authority ("KDFFA") appreciates this opportunity to testify before you concerning proposed House Bill ("H.B.") 2627, as amended by the House Committee of the Whole. KDFFA will focus this testimony on three areas: first, some questions related to the intent of the amended bill; second, an overview of the procedures currently followed by KDFFA; and third, a discussion of the changes KDFFA expects if H.B. 2627 is implemented into law.

Let me preface my testimony by saying that today I am reminded of the 1997 Legislative Session, when Senate Bill 18, which also began as an ethics bill, was amended to establish KDFFA as the "contract czar" for the entire State and all its taxing jurisdictions. KDFFA sees the amendments to H.B. 2627 as a pared down version of that bill. Instead of giving KDFFA power over all municipalities as Senate Bill 18 proposed, the bill before this committee today proposes similar KDFFA authority over all State agencies.

KDFFA believes these amendments grew out of a generally accepted perception that the competitive bid process saves money and prevents favoritism in the selection of professionals and consultants. I suggest that this is not always true, particularly not when contracts for professional and consulting services are awarded solely on the basis of lowest bid price. I believe we all know that the lowest bid is not always the best bid, and that the cost of any service cannot be measured solely by the dollars spent for that service at the moment. Other "costs" often manifest themselves in the long term.

**QUESTIONS ABOUT THE INTENT OF THE AMENDED BILL**

- ◆ **Is it the intent of the Legislature to change the mission of KDFFA?** KDFFA was legislatively created for two primary purposes: (1) enhancing the State's ability to finance capital projects and public programs by centralizing the function of debt issuance and management; and (2) improving access to long-term capital financing for State agencies, political subdivisions, public and private organizations and businesses. Over the past thirteen years, KDFFA has evolved into an effective, reliable organization, which strives to accomplish these mandated goals. We believe H.B. 2627 will significantly alter KDFFA's area of responsibility.
  
- ◆ **Is it the intent of the Legislature to significantly increase the responsibilities, and consequently the time commitment, of the members of KDFFA's Board of Directors?** KDFFA Board members are appointed by the Governor to serve four-year terms. Currently, the Board meets once each month for two to three hours. Board members are not compensated for their time, and current members are active, working professionals with full-time commitments to their own careers. H.B. 2627 provides that the KDFFA Board consider bids and award contracts for

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all professional services and consulting contracts to be entered into by all State agencies, and that the Board will judge when "an agency emergency requires immediate performance of services" so that the competitive bid requirements of the bill may be waived. Since the bill defines professional services as those provided under contract by any member of any profession which is "licensed or regulated under the laws of the state of Kansas," the number of contracts which would be considered and awarded would be enormous, requiring more frequent, longer meetings of the Board, even if they merely considered and accepted the recommendations of staff. An emergency situation would be even more difficult to address under the administration of a part time Board whose current members do not reside in Topeka. K DFA staff speculates that adoption of this bill in its present form could precipitate the resignations of our Board members.

- ◆ **Is it the intent of the Legislature to disregard the recommendations made by Legislative Post Audit ("LPA") in its 1996 report *Reviewing State Contracting for Consultants and Other Professional and Technical Services*, or to overturn existing policies and procedures as promulgated by the Division of Purchases?** K DFA found the 1996 LPA report to be thorough, straightforward, and well written. We agree with the recommendations made by LPA, and respectfully call the Committee's attention to the following specific areas:

- On page 12, the report concludes that "Kansas' current procedures [for contracts with professionals and consultants] aren't adequate for two primary reasons. First, although a number of requirements for acquiring professional services are spelled out in the law, Kansas has no formal, written procedures relating to the acquisition of professional services. . . . Second, Kansas has no centralized policies or procedures to guide State agencies once a contract has been awarded." LPA then states that "**As Kansas' Centralized Purchasing Agency, the Division of Purchases Is Responsible for Providing Appropriate Guidance to State Agencies About Contracting for Professional Services.**"
- Next, on pages 20 and 21, LPA states that "**The Division of Purchases would be the logical entity to provide centralized guidance to State agencies about good contract management practices.** . . . [because] Division of Purchases' staff has a tremendous amount of knowledge and experience in this area. Besides providing written guidance, the Division also could make its staff available to agencies. . . [by] focusing on the larger, more significant, more complex, or more troublesome types of contracts. . . ."
- On page 25 of the report, LPA clarifies that "The recommendations presented in [the] report aren't intended to increase the Division [of Purchases]' 'regulatory' role over the contracting process for professional services. Rather, they are intended to increase the Division's visibility and usefulness as a service or 'consulting' agency, and to help ensure that the knowledge and expertise its staff have developed over time are brought to bear on the higher-risk or more complex contracting projects State agencies undertake. This increased

involvement in the higher-risk contracts can be offset by giving agencies increased flexibility in making lower-risk purchases on their own."

- The specific recommendations made by LPA on pages 25 through 27 of the report are excellent. **We concur with LPA's recommendation that the Division of Purchases is the logical entity to promulgate written guidelines, provide technical assistance, and oversee contract management for State agencies.**
- K DFA believes the Division of Purchases currently has in place adequate procedures to effectively administer the consideration and award of all material contracts for professional services and consultants. **We respectfully suggest that if the Legislature views the Division of Purchases policies and procedures to be inadequate, it works with the Secretary of Administration to solve those shortcomings, rather than removing the responsibility from the Division.**

#### CURRENT K DFA PROCEDURES AND RESPONSIBILITIES

As you know, K DFA was created by the Legislature in 1987 as an independent instrumentality of the State. K DFA is recognized in the State's financial statements and in *The Governor's Budget Report* as the primary issuer of debt to finance capital improvements for State agencies, other than projects for the Kansas Department of Transportation. K DFA also acts as a conduit issuer of debt to finance capital projects for low-income housing developers, health care facilities, beginning farmers, and other entities. From our creation in 1987 to June 30, 1999, K DFA has completed 133 financing projects, totaling over \$1.6 billion--much of that total for State agency projects. In addition, K DFA has made 346 loans to beginning farmers, totaling over \$26.3 million. We are experienced in issuing debt, which means we have become experienced at selecting the finance professionals necessary to that process. When issuing bonds, K DFA routinely uses the services of such professionals as underwriters, bond counsel, financial advisors, tax counsel, and issuer's counsel.

At the direction and with the oversight of our Board, K DFA staff has developed procedures to issue requests for proposals ("RFPs") for finance professionals, to evaluate the responses to those RFPs, to recommend to our Board which respondent to select, and to enter into contracts with individuals and firms to provide such services. We believe we do an excellent job of structuring and administering this process of selecting finance professionals. **However, K DFA staff has no expertise in the broad range of other types of professional and consulting services contemplated by H.B. 2627.** Consequently, administration of the bill as amended would require hiring additional personnel. Because K DFA is a fee funded organization, which receives no appropriation of State funds, the salaries and benefits of this additional staff would be paid from existing revenues.

**CHANGES IF H.B. 2627 BECOMES LAW**

Finally, I will discuss changes K DFA anticipates if H.B. 2627 becomes law. As originally introduced, H.B. 2627 proposed amendments to various concerning governmental ethics. This ethics reform is not opposed by K DFA.

However, substantive amendments to the bill were introduced on the floor of the House, and the amended bill was then adopted by the House. Following is our synopsis of the amendments, which have significant, and we believe negative, impact on K DFA and on State agencies.

H.B. 2627 proposes amendments to K DFA statutes (K.S.A. 74-8904 *et seq.*), giving the K DFA Board the power to establish guidelines to award all professional and consulting services contracts for State agencies, on the basis of competitive bids, and also to judge whether an "agency emergency" exists which would allow waiver of the competitive bid process.

Passage of this legislation would have significant effect on K DFA's operation and area of responsibility, expanding strikingly the scope of K DFA's authority, and drastically changing the current mission of K DFA. We believe the various types of professional services, as defined in the bill, together with the dissimilar entities using those services, would make it virtually impossible to promulgate one generic set of rules and regulations. K DFA does not currently have the staff or the technical expertise to develop all these rules and regulations.

One immediate probable effect on K DFA's operation would be the addition of two attorneys and two additional support staff. The attorneys would develop, refine and update rules and regulations for State agencies; however, it is also our belief this bill would mean each State agency would need additional legal assistance, whether hired staff or contracted services, to assure compliance with the new rules and regulations and to conform their assorted contracts and procedures to K DFA's rules and regulations.

As I mentioned earlier, the volume of contracts required to be awarded by our Board, pursuant to K DFA guidelines is staggering, since the bill's definition of professional services encompasses all professions "licensed or regulated under the laws of the state of Kansas." This includes such diverse occupations as pesticide applicators, attorneys, barbers, accountants, bankers, morticians, architects, teachers, physicians, food service providers, and underwriters. Our area of expertise is debt financing. We have no qualifications to select architects, exterminators, teachers, etceteras, etceteras.

As stated previously, currently the K DFA Board meets once a month for two to three hours. Adoption of this legislation will demand more frequent, lengthier meetings of the K DFA Board to allow sufficient time to consider and award the many contracts which would have to be granted. It is uncertain whether the current Board members could be expected to continue to serve. Replacement Board members, who would have to devote more time and bear even more responsibility, may

require compensation. Certainly the K DFA staff time required preparing documentation and recommendations for Board meetings would increase dramatically.

Although H.B. 2627 mandates that all State agencies are subject to K DFA guidelines, no penalties are designated for non-compliance. Compliance oversight authority is not specifically delegated to K DFA. If the new law is to be implemented, K DFA would expect that all State agencies will need additional staff to monitor compliance and to administer the required "provision [to the K DFA Board] of such information, records and assistance as the board may require in . . . awarding such contracts [for all professional services]."

As indicated in the preceding paragraphs, K DFA anticipates significant dollar increases in its own expenditures for staff as well as those of other State agencies. Without additional revenues to offset these costs, K DFA would be in danger of bankruptcy in a matter of a few years.

K DFA tries very hard to select professionals fairly, with the primary goal of obtaining the best services for an affordable price. It is not an easy task, when so many factors other than price should be considered to achieve the *best* service. We believe other State agencies award professional service and consulting contracts in a similarly conscientious manner. If implemented into law, H.B. 2627 would significantly change the methods used to achieve good professional and consulting services at fair prices. Those changes to a process that, in our opinion, "ain't broke" would have a large impact on K DFA's operations and drastically change our mission

We support the recommendations in the 1996 LPA report, and K DFA stands ready and willing to provide assistance to the Division of Purchases, or any other entity, in establishing necessary rules and regulations for assuring equitable, effective selection of professionals **in our area of experience**, and we are happy to provide details of our own selection procedures.

We strongly urge this Committee and the full Legislature to reconsider imposition of a mandate to establish K DFA as the State's "contract czar." We are neither technically qualified nor adequately staffed to perform such a task without significant changes in our organization. We are most concerned with the administrative burden this bill places on K DFA and State agencies. However, we support the concept of the State's Division of Purchases continuing to establish and implement logical and fair competitive selection guidelines for professional services and consultant contracts.

We hope this testimony will be helpful to you. If K DFA President Ken Frahm, K DFA General Counsel Rebecca Floyd, or I can answer any questions, or be of further assistance, please do not hesitate to ask.