

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on February 20, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Jordan (Excused)

Committee staff present: April Holman, Legislative Research Department
Bob Nugent, Revisor of Statutes
Lea Gerard, Secretary

Conferees appearing before the committee: Tim Sheehan, Free Markets
Dr. Gary George, Olathe School District
Marty Nohe, First Vice President Public Finance Group
John Houlihan, Director of Purchases

Others attending: See attached sheet.

SB 146 - Act concerning the job investment credit act; expanding eligibility for sales tax exemptions.

Senator Emler moved, seconded by Senator Brungardt, that SB 146 be recommended favorably for passage. The recorded vote was Yes - 8 No - 0 in favor of the motion. The bill will be carried by Senator Emler.

SB 176 - Act concerning corporations, relating to professional corporations.

Senator Jenkins moved, seconded by Senator Steineger, that SB 176 be amended on Page 1, after Line 41 by adding the following:

- (20) licensed geologists
- (21) licensed clinical marriage and family therapists
- (22) licensed clinical psychotherapists
- (23) or any other profession licensed by a state regulating board.

The voice vote was in favor of the motion.

Senator Wagle moved, seconded by Senator Emler, that SB 176 be recommended favorably for passage. The recorded vote was Yes - 8 No 0 in favor of the motion. The bill will be carried by Senator Wagle.

SB 180 - eliminate the Performance Review Board.

Senator Jenkins will be the chairperson of the post audit committee when it's the senate's turn to chair that committee and is interested in pursuing this type of review.

Senator Barone encouraged Senator Jenkins to pursue this important issue to look for ways to keep the process of reviewing functions of state government previously charged to the Performance Review Board.

Senator Jenkins moved, seconded by Senator Steineger, that SB 180 be recommended favorably for passage. The recorded vote was Yes - 7 - No 1 in favor of the motion. The bill will be carried by Senator Jenkins.

SB 227:

In accordance with KSA 75-3715a, the fiscal note concerning **SB 227** was submitted to the committee.

Tim Sheehan, Free Markets gave a demonstration of on-line bidding to Committee members. Mr. Sheehan explained in State Procurement the practice for the state procuring goods is through solicitation that involves a sealed bid process. The idea behind on-line bidding is to allow vendors to submit their bids on-line in an inactive open bidding environment. He has done 22 on-line bids for Pennsylvania, a long standing clients for a savings of about thirteen million dollars over the last eighteen months. The benefits of on-line bidding are savings of tax payer dollars, improved efficiency and market transparency. Some of the states that have legislation in place are Florida, Minnesota, South Carolina, Pennsylvania, Missouri and Massachusetts.

In response to a questions from the Committee, Mr. Sheehan stated they get paid one of several ways; flat

annual fee, monthly fee or a percentage of the volume that is being driven through the on-line channel.

Dr. Gary George, Olathe School District, testified in support of **SB 227** with an amendment requesting authority to sell school bonds using the internet auction concept that was just demonstrated (Attachment 1). We believe this is an opportunity for school districts to save more money using the auction process. The law council, Gilmore & Bell has prepared an amendment that would change some language in KSA 10-106, the bond statute, making it possible to sell school bonds (Attachment 2). This process is being done in 25 other states since 1997 and over \$5.1 billion dollars has been sold. We believe this will save the State of Kansas money because of the money that the state reimburses local school districts for bond and interest payments.

Marty Nohe, First Vice President Public Finance Group, testified in support of **SB 227** (Attachment 3).

John Houlihan, Director of Purchases, spoke briefly in support of **SB 227** but would like to have amendments made to the bill so it is more compatible with the current Kansas purchasing statutes and practices (Attachment 4).

Meeting was adjourned at 9:30 a.m.

Next meeting is scheduled February 21, 2001 at 8:30 a.m.

TESTIMONY FOR AN INTERNET AUCTION PROCESS
FOR SELLING SCHOOL BONDS

FEBRUARY 20, 2001
Gary George, Ed.D.

Senator Brownlee and Members of the Committee. It is a pleasure to meet with you today. We are seeking statutory authorization that would permit an internet auction of school bonds. This would be a true auction concept in which bidders could be aware of other bids. This process has the potential to save taxpayers' money as bidders bid more aggressively for bonds. It is our understanding that over \$5.1 billion dollars in bond auctions have taken place in 25 states since 1997. We believe issuers of bonds in Kansas ought to have this as an option. Entities which prefer to issue bonds as they always have could continue to do so. Those entities which wish to use the internet auction concept could do so. Auctions have a long tradition in America. The internet simply adds an electronic component.

With this process we can save the cost of printing the preliminary official statement and the official statement. This could save us several thousand dollars. As bidders aggressively attempt to outbid one another, we have an opportunity to drive down the interest rate thereby saving local taxpayers substantial sums over a 20 year bond issue of millions of dollars. Our financial advisor suggests saving in the range of 3-5 basis points. Further, the internet process should enable far away bidders to participate. As we increase the size of the pool of bidders, we have the potential to save our taxpayers additional money.

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In addition, as school districts acquire better interest, local taxpayers save. To the extent that the state helps with bond and interest payments, the state of Kansas saves money.

Our bond counsel, Gilmore and Bell, has prepared language which should amend the existing statute KSA 10-106. We believe this would provide clear statutory language for us to use the internet auction process.

In closing, let me say that we hope you will give favorable consideration to legislation that will allow for internet auctions for bond issues.

10-106. Sale of bonds; public sale, when; notice; bids. (a) Municipal bonds shall be sold at public sale as follows: The officers having charge of the sale of the bonds shall publish a notice of the sale one time in a newspaper having general circulation in the county where the bonds are issued and in the Kansas register. Such notices shall be published not less than six days nor more than 30 days before the sale and shall contain the following information: (1) Except as provided by subsection (b), the date, time and place at which a public auction will be held or at which written bids will be received and considered for the sale of the bonds for cash at such price as the municipality may accept; (2) the date of issue, total par value and denomination of the bonds being sold; (3) the dates and amounts of maturities of the bond issues; (4) the dates on which interest on the bonds shall become due and payable; (5) the place or places where and the approximate date on which the bonds being sold will be delivered to the purchaser; (6) a statement that a good faith deposit in the form of a certified or cashier's check or surety bond in the amount of 2% of the total par value of the bonds being sold ~~shall accompany each bid or in the case of public sale at auction the same shall be furnished by each bidder;~~ (7) a statement disclosing whether or not the purchaser of the bonds will be required to pay for the printing thereof and whether or not and to what extent the purchaser of the bonds will be required to pay the expense of legal services rendered to the municipality in connection with the issuance of the bonds including the fees of recognized bond counsel for an opinion as to legality of issuance; (8) the assessed valuation of the municipality; and (9) the total bonded indebtedness of the municipality as of the date on which the bonds being sold are dated including the bonds submitted for bid. The

on such terms and conditions as shall be provided by the municipality

at or prior to the time of sale

(9) that bidders may be required to be qualified in a manner established by the municipality before submitting a bid

rate of interest may be omitted in advertising and the bidders requested to specify the lowest interest rate or rates on the bonds at which they will pay the purchase price.

If sold at public sale ~~with written bids~~, purchasers shall submit their bids in writing, sealed or sent by telefacsimile or other electronic transmission, as set forth in the notice of sale, for all or any part of the bonds. ~~Each bid shall be accompanied by a certified or cashier's check or surety bond for 2% of the total amount of the bid.~~ In case any purchaser, whose bid is accepted, fails to carry out the contract, the deposit shall be forfeited to the municipality issuing the bonds. ~~Written bids shall be~~ disclosed publicly and tabulated or compared only at the time and place specified in the notice. At the time and place specified, the bonds shall be sold to the highest and best bidder or bidders, and the bonds may be allotted among the bidders, however, any or all bids may be rejected. No contract for the sale of the bonds shall be made except on bids submitted as provided in this section. No bonds shall be delivered to any purchaser until the amount of the bid is placed in the hands of the officer in charge of the sale. The provisions of this section relating to the public sale of bonds shall not apply to bonds secured solely and only by revenues, bonds sold, pursuant to written agreement, to the government of the United States of America or any bureau, department, instrumentality or agency thereof, bonds issued pursuant to K.S.A. 10-427 et seq., and amendments thereto, and all bonds of the same series or which are issued simultaneously with such bonds and bond sales where the total amount of the issue does not exceed \$100,000. In such cases, the bonds may be sold at public or private sale as the officers having charge of the sale of such bonds determine. The practice of providing

Bids

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more than one issue within a twelve-month period for any one project is prohibited unless the project engineer or architect certifies that it is necessary to do so for the orderly construction progress of the project.

(b) As an alternative to providing notice of the date, time and place of public auction or receipt of bids provided by subsection (a)(1), the officers having charge of a bond sale may establish a time period of not less than seven nor more than 30 days during which such bonds would be sold. Notice of such sale period shall be published one time in a newspaper having general circulation in the county where the bonds are issued and in the Kansas register and shall be published not less than six days nor more than 30 days before the beginning date of the sale period. The notice shall contain the information specified in subsection (a) except that in place of the time and date of sale, the notice shall specify the time period during which the bonds would be sold and the manner in which persons interested in submitting a bid may register for notice of the bond sale. At least three business days prior to the time and date of the bond sale, the officers having charge of the sale shall give notice to all persons having registered for notice of the bond sale, and bids shall be submitted and received and the sale made in the manner provided in subsection (a).

Testimony Prepared for the
Senate Committee on Commerce
Regarding Legislation on Internet Bond Sales

Presented by

Marty Nohe, First Vice President

Public Finance Group

Kirkpatrick Pettis, A Mutual of Omaha Company

February 20, 2001

Senate Commerce Committee

Feb. 20, 2001

Attachment 3-1

Adding New Method for Internet Sale of Bonds

Overview

As a Financial Advisor for hundreds of bond sales in Kansas over the past 2 decades, I feel reasonably qualified to speak on behalf of Kansas cities, counties, school districts and other jurisdictions in the methods of selling tax exempt municipal bonds.

The bill before this committee is simply a bill to add an additional platform or method of selling bonds over the internet. Currently there are 3 primary internet platforms competing in the open market attempting to have jurisdictions use their services for bidders to submit bids for the sale of bonds.

In Kansas, there have been around a dozen bond sales where bidders, which include investment banking/brokerage firms and dealer banks, have had the option to submit their bids on the internet on either the Bloomberg system or the Parity system. The third national platform, Muni-auction, which has the capability to conduct a true auction, unlike the other platforms, is not currently available to be utilized by Kansas jurisdictions. *This bill would allow a real-time auction to be available.*

The benefits for selling bonds electronically on the internet fall into three primary categories:

Interest Rate Savings Potential

Costs Avoidance

Administrative Enhancement

Interest Rate Savings Potential

Typically bond issues in the range of \$1-20 million, sold competitively in Kansas are primarily sold to regional brokerage firms and regional bank systems, which then are resold to both individuals and institutions like mutual bond funds and insurance companies. When the issue size is over approximately \$20 million the large national brokerage firms and national sized bank systems will be more likely to submit bids.

By allowing all forms of internet bidding, it opens and simplifies the bidding process to a larger universe of bidders, which as in all bidding or procurement processes, tends to have all bidders “sharpen their pencils” and improve their bids.

In addition, internet bidding can allow for bidders to bid on individual maturities, reflecting their customers needs more efficiently. For example, if my firm’s primary customers are individuals which tend to buy bonds in the 5-10 year maturities and the bond issue is a 25 year bond issue, my firm can submit bids on only those bonds maturing

in 2006 through 2011. This increases the likelihood of our firm's interest in submitting a bid.

As Financial Advisor, our firm has conducted several dozen internet sales and we estimate improved bids in the range of 3-5 basis points or 3-5 hundreds of one percent.

An improvement of 5 basis points on a 20 year, \$10,000,000 bond issue is \$100,000! Little improvements can generate a lot of taxpayers savings.

Cost Avoidance

With all initial security offerings, stocks and bonds, certain mandatory disclosure documents are required to be prepared and transmitted to potential buyers. In the municipal bond world this document is referred to as the Official Statement, which can be 75 or more pages. Traditionally this is printed and mailed or overnight delivered to bidders throughout the country to up to 100 locations. This cost to the taxpayer can range up to \$10,000. The internet bidding with one of the platforms, can "post" the Official Statement "on line" and bidders can view or download the document, thus the issuer can avoid this cost.

Administrative Enhancement

- ✓ Ease of submitting the bids via the internet avoids last minute human error.
- ✓ Results of the bids can be available to the public more quickly by posting results on the internet.
- ✓ Automatic bid error checking feature is built into all platforms
- ✓ Marketing and pre-solicitation to bidders and amendment to terms of the sale can be provided.

Summary

The passage of this bill has no "down side" and has the potential of improving the process for the sale of bonds by the governmental jurisdictions in Kansas. Traditional bids in the form of paper bids will continue to be allowed for those not ready or wishing to participate in e-commerce. Certainly there will be an evolution of the use of the internet in all procurement systems and I view this legislative amendment as a small technical improvement to Kansas law.

Sampling of some current Kansas Clients of Kirkpatrick Pettis:

City of Lenexa

USD 233 Olathe School District

City of Pittsburg

City of Gardner

City of Spring Hill

City of DeSoto

Johnson County Park & Recreation District

Topeka & Shawnee County Library District

**Mr. Nohe is a life long resident in Kansas and can be reached at 913-486-3355 or
800-206-0634**



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COMMITTEE ON COMMERCE
TESTIMONY ON SENATE BILL NO. 227
February 20, 2001

Presented by John T. Houlihan
Director of Purchases

Madam Chair and members of the committee. I am John Houlihan, the State Director of Purchases. Thank you for the opportunity to speak on behalf of the Department of Administration about Senate Bill 227.

Senate Bill 227 would allow the state to accept bids that are transmitted electronically over the Internet in a real time, competitive bidding event, also known as a reverse auction. The legislation would also exempt on-line bidding from K.S.A. 75-3739 *et seq.*, the competitive bid statutes.

This type of on-line bidding is authorized in 13 other states, and most notably the State of Pennsylvania. The computer hardware and software used to stage these events is usually provided by a third party application service provider specializing in this area, and funded on a "pay as you go" basis by two methods. First, a percentage fee to manage the event is charged to the state agency or central procurement authority initiating the event. Second, a fee calculated as a percentage of the cost savings that are obtained is assessed. These savings are based on the historical amounts paid for the service or commodity by the state entity. If the bidding were conducted by the Division of Purchases, the fee paid by the State for each event would have to be passed on to the agencies, with that cost to be covered out of the agency's cost savings. The fee for running these events is usually 1% to 4%, and may or may not result in a savings to the state.

Reverse auctioning is a small part of the overall procurement reform that I have been working on. We are working on a competitive solicitation to install an Internet based overall electronic procurement system in the state.

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My first priority is to get my statewide contracts into an electronic catalog format, which will allow electronic ordering, billing and payment. The next priority will be to accept electronic bids and conduct sealed electronic bid openings. Last priority will be other electronic features such as reverse and regular auctioning.

I believe the words in S.B. 227 are based on model legislation and as such are somewhat generic in nature. I would like to propose revisions to the bill so that it is more compatible with our current Kansas purchasing statutes and practices.

[Explain revised bill]

This concludes my prepared testimony, are there any questions?

SENATE BILL No. 227

By Committee on Commerce

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9 AN ACT concerning state purchasing; providing a mechanism for the
10 submittal of on-line bids.

11

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

13 Section 1. The purpose of this act is:

14 (a) To provide increased economy in government procurement activ-
15 ities and to maximize to the fullest extent practicable the purchasing val-
16 ues of funds while ensuring that procurements are the most advantageous
17 to public agencies;

18 (b) to foster effective broad-based competition for public procure-
19 ment within the free enterprise system;

20 (c) to modernize the law governing procurement in this state and
21 permit the continued development of explicit and thoroughly considered
22 procurement policies and practices;

23 (d) to ensure the fair and equitable treatment of all persons who deal
24 with the procurement system through a transparent bidding process
25 which will promote increased public confidence in the procedures fol-
26 lowed in public procurement; and

27 (e) to provide an ongoing source of funding for new and innovative
28 electronic procurement practices that would otherwise not be possible
29 due to existing funding practices and guidelines.

30 Sec. 2. (a) "Information technology" means data processing, tele-
31 communications, and office systems technologies and services.

32 (b) "Internet" means the international computer network of both
33 federal and nonfederal interoperable packet switched data networks, in-
34 cluding the graphical subnetwork called the world wide web.

35 (c) "On-line bidding" means a procurement process in which public
36 agencies receive vendors' bids for goods, services, construction or infor-
37 mation services electronically over the internet in a ~~real-time~~ competitive
38 bidding event.

39 Sec. 3. (a) When the ~~Secretary of administration or another state~~
40 ~~agency purchasing agent~~ determines that electronic, on-line bidding is
41 more advantageous than other procurement methods, ~~a purchasing agent~~
42 ~~may~~ use on-line bidding to obtain bids electronically for the purchase of
43 goods and services.

director of purchases or direct in terms

state agencies may utilize procedures prescribed by the director of purchases to

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1 (b) The solicitation must designate an opening date and time. The
 2 closing date and time may be fixed or remain open, depending on the
 3 structure of the item being bid on-line. Information regarding the closing
 4 date and time must also be included in the solicitation. At the opening
 5 date and time, ~~public agencies~~ must begin accepting on-line electronic
 6 bids, and must continue accepting bids until the bid is officially closed.
 7 All bids must be posted electronically and updated on a real-time basis.
 8 Bidders may be required to register before the opening date and time
 9 and, as part of that registration, to agree to any terms, conditions or other
 10 requirements of the solicitation. ~~Purchasing agents~~ may choose to pre-
 11 qualify bidders and allow only prequalified bidders to bid on-line.

the director of purchases

either

or opened at the bid closing time

The director of purchases

12 (c) The provisions of K.S.A. 75-3739 et seq., and amendments
 13 thereto, regarding procedures for sealed bidding and the opening of bids
 14 shall not apply to bids submitted under this section. All bids submitted
 15 pursuant to this section shall be ~~deemed open records~~.

K.S.A. 75-430 relating to advertisements in the Kansas register and the provisions

16 Sec. 4. Municipalities are hereby authorized to adopt similar proce-
 17 dures for the acceptance of on-line bids for goods and services.

subject to the open records act

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

when authorized in writing by the governing body of the municipality