

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairman Donald Dahl at 9:00 a.m. on April 2, 2003 in Room 243-N of the Capitol.

All members were present:

Committee staff present: Jerry Ann Donaldson, Kansas Legislative Research Department  
Renae Jefferies, Revisor of Statutes  
Mitchell Rice, Revisor of Statutes  
June Evans, Secretary

Conferees appearing before the committee: Representative Rob Boyer  
Hal Hudson, National Federation of Independent Business  
Terry Leatherman, Kansas Chamber of Commerce  
Amy Garcia, R.N., Wichita  
John Ostrowski, Attorney, AFL/CIO  
Jeff Cooper, Kansas Trial Lawyers Association  
Representative Doug Patterson  
Curt Wright, Taylor Oil, Inc.  
Bob Alderson, Casey's General Store  
Roger B. Haack, President & CEO, DataTeam Systems, Inc.  
Larry Patrick, Central Region Director for Smoky Hill Education Service Center

Others attending: See attached sheet

The Chairman called the meeting to order and announced that minutes of March 11, 12 and 18 had been distributed. If there are any corrections or additions, contact the secretary to change. If there is no response before the end of the week, the minutes will stand as presented.

The Chairman opened the hearing on **SUB SB 181 - Workers compensation, pre-existing condition.**

Staff gave a briefing on **SUB SB 181**. A prior impairment rating or permanent restrictions are not necessary to prove preexisting (symptomatic) functional impairment or disability. The trier of fact shall consider all medical testimony on the issue of preexisting impairment or disability. Any award of compensation shall be determined by showing, through medical evidence, the amount of functional impairment or disability caused by work activity for the employer from whom the employee is seeking compensation.

Representative Rob Boyer, a proponent to **SUB SB 181** testified this is an important change to our state's workers compensation law. The application of the law has become unfavorable to the business community and is resulting in double digit-increases in workers compensation premiums (Attachment 1).

Hal Hudson, State Director, National Federation of Independent Business, a proponent to **SUB SB 181** testified the Workers Compensation Act has been in effect for many decades. Kansas employers have accepted the responsibility for paying millions of dollars a year in premiums to purchase Workers Compensation Insurance for one basic reason.

The Workers Compensation Act sets up "NO-FAULT" exclusive remedy for dealing with problems related to on-the-job injuries of workers. The Act provides that employers' insurance will pay for medical expenses and a portion of wages lost as a result of job-related injuries (Attachment 2)

Terry Leatherman, Vice President - Legislative Affairs, Kansas Chamber of Commerce, testified as a proponent to **SUB SB 181**. Kansas employers are clearly facing significantly higher workers compensation insurance costs. However, **SUB SB 181** does not propose to attempt to reduce those costs by slashing benefits

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on April 2, 2003  
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paid to injured workers. Instead, the legislation attempts to address two areas of workers compensation which are costly and outside the scope of what employers should be responsible for compensating.

Reducing workers compensation awards where a pre-existing condition contributes to the worker's injury is already law in Kansas. Pre-existing condition language was one of the major reforms of the Act by the Kansas Legislature in 1993.

Today's problem, from an employer's perspective, is that a pre-existing condition determination is extremely difficult to obtain. **SUB SB 181** requires medical evidence to be used to determine how much an injury was caused by work. **SUB SB 181** makes the 1993 reform applicable today. The Kansas Chamber respectfully requests **SUB** for **SB 181** be amended to return it to the Legislature's original intention (Attachment 3).

Amy Garcia, R.N., Wichita Independent Business Association, testified as a proponent to **SUB SB 181**. Workers compensation premiums and costs associated with lost time are a major, bottom line expense for small businesses. For many businesses, workers compensation is the second most expensive benefit behind salaries and it is extremely difficult to replace the lost work. Employers have been frustrated by paying for pre-existing conditions through workers compensation instead of health insurance. **SUB SB 181** does not reduce benefits. Employers are still responsible for injuries caused by work. This bill clarifies situations related to economic layoffs (Attachment 4).

Terri Roberts, Kansas Coalition for Workplace Safety and the Kansas State Nurses Association, testified in opposition to **SUB SB 181**. Nothing in **SUB SB 181** addresses the need for improved workplace safety. Nothing is mandated that insurance companies pass along their profits to Kansas employers in the form of lower insurance premiums. The bill further devalues the Kansas worker, further enriches Kansas workers compensation insurance carriers, and further undermines the promise employers made to Kansas workers in 1911 (Attachment 5).

John M. Ostrowski, Attorney, Kansas AFL-CIO, testified in opposition to **SUB SB 181**. The Kansas AFL-CIO has numerous reasons for opposing the bill, but today, seeks to emphasize the fact that this is "a solution in search of a problem." **SUB SB 181** is nothing more than an effort to further reduce benefits to injured workers. Proponents have indicated in prior testimony that the bill seeks to "end abuses in the system," and "enforce the intent of the 1993 amendments," and "control liberal judges," etc. Be assured that this bill has nothing to do with any matter other than a reduction in benefits to injured workers. This is a benefit reduction bill. Premiums in Kansas are low and stable. Increases in premiums are not due to increased payouts, but rather loss cost multipliers. This is nothing more than an unregulated protection of insurance company profits. Medical costs are driving payouts and this bill does not address medical costs. Proponents of the bill do not even indicate that premiums will fall or stabilize with passage of this bill (Attachment 6). (NOTE: Yellow book "*And now you'll learn the rest of the story*" is filed in the Chairman's office)

Jeff K. Cooper, Kansas Trial Lawyers Association, testified as an opponent to **SUB SB 181**. Most Kansas employees are covered by the Workers Compensation system. The current system offers minimal protection to Kansans who are injured on the job. This bill not only slashes workers compensation benefits to workers – benefits that are already among the lowest in the nation – but does nothing to improve work place safety.

This legislation would erode the rights of Kansans with disabilities from on-the-job injuries. **SUB SB 181** creates a double-standard that favors insurance companies at the expense of injured workers. The proponents of the bill are attempting to circumvent the current statutory procedure by introducing legislation that has not been reviewed and studied by the Workers Compensation Advisory Council (Attachment 7).

The Chairman closed the hearing on **SUB SB 181** and stated this was something to think about over the summer. There is no time left this session to work the bill, but it will be at the top of the priority list next session.

The Chairman opened the hearing on **HB 2330 - Prohibited acts and remedies for certain acts involving sale of motor fuel below cost.**

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on April 2, 2003  
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Staff gave a briefing on **HB 2330** concerning the sale of motor fuel. No marketer or retailer of motor fuel shall sell or offer for sale, by posted price or indicating meter, motor fuel at a price below cost. Cost means product cost and actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law. If such costs are unavailable, then cost means the invoice price or the lowest terminal price on the day at the terminal from which the most recent supply of motor fuel delivered to the retail location was acquired, as published by a nationally recognized petroleum price reporting service, plus actual freight or transportation costs plus applicable taxes and fees pursuant to federal, state and local law.

Representative Doug Patterson, a proponent to **HB 2330**, testified that there was a growth of large high volume retail stores, many from an Arkansas chain, along highways, that place gasoline pumps in the parking lot and sell gasoline at a loss to bring customers into the store. Retailers sell at retail and give coupons for the customer to redeem inside the store. Gas stations operate on a very small margin and the development of convenience stores selling gasoline are causing unfair sales. The federal law says it is illegal to sell below cost. This needs to be dealt with next year. My proponent for the bill was unable to be here today and give testimony.

Curt Wright, Taylor Oil, Inc., testified in support of **HB 2330**. Taylor Oil is a family owned petroleum marketer in Wellsville, Kansas and employs more than 70 people. Mirastar, a competitor, routinely sells gasoline below what Taylor Oil can buy gas for from BP Amoco. Large companies continue to dominate today's marketplace. Many of these companies are located outside the state of Kansas and they take their profits outside the boundaries of this state to benefit people from other states. A large part of preserving competition is to preserve choice. It is not good public policy to allow some company to take a precious natural resource and use it as a loss leader to drive their business (Attachment 8).

Bob Alderson, Casey's General Stores, Inc., testified in opposition to **HB 2330**. Casey's has more than 100 convenience stores located in Kansas, and these stores employ in excess of 800 people with an annual payroll of more than \$8 million. In 2001, those stores paid Kansas property taxes of more than \$615,000 and they remitted sales taxes in excess of \$2.8 million.

As a general principle, Casey's believes that free market competition should establish motor fuel prices without government interference. Retailers and consumer demands should establish the price for products and not the government. Our economic system works so well because competition in the market place establishes prices for products based on supply and demand.

During this time of the state's well-publicized budget crunch, this bill would appear to add a lot of responsibilities to the Department of Agriculture and the Attorney General's office. There is no funding mechanism in the bill, so these agencies would be expected to absorb the additional duties imposed by the bill without any additional financial resources (Attachment 9).

The Chairman closed the hearing on **HB 2330** and stated the bill would be held over until next year.

The Chairman opened the hearing on **HB 2385 - Interlocal agreements, prohibits government competition against private business.**

Staff gave a briefing on **HB 2385**.

Roger Haack, President and CEO, Data Team Systems, Inc., Lawrence, testified as a proponent with an amendment to **HB 2385**. DataTeam provides specialized fund accounting, human resources, fixed assets and other business office solutions to school districts in Kansas and other states. We believe strongly in our education system and in the appropriate activities of education service centers. We also believe strongly in fair competition.

**HB 2385** is a strong step in the right direction to limit unfair government competition and to promote a level playing field and thus a healthy economy in Kansas. The bill, as currently stated, has too many loopholes, but with some changes to the language, it can be a strong and effective instrument. The concept of not allowing a governmental agency to convert a for-profit-tax-paying entity into a not-for-profit enterprise constitutes

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sound economic policy.

The exception that allows a government agency to compete if they can do it at a lower cost also has significant problems. The bill must specify that the costs used in the cost comparison are to be those available to private enterprise. Private small business provides 75% of the new jobs in Kansas. Private business can provide a growing economy and generate additional tax revenues and is the best approach to balancing the budget. The expanded tax revenues allow the state to fulfill its public education and other obligations to the people of Kansas. This goal is best met when government does not compete against private business and competition is on a level playing field (Attachment 10).

Larry Patrick, Central Region Director for Smoky Hill Education Center, testified in opposition of **HB 2385**. **HB 2385** promotes small business organizations and education service centers understand the complexity of running a small business. Since we have no taxing authority, we are much like a small business in that we exist through fees for services. We are different in that our only customers are school organizations and it is our mission to save them money while earning enough to keep our doors open. This is sometimes difficult because, while we are no taxing authority, we are required by law to operate and follow personnel and all regulations mandated for school districts. Lynn Myers, Insurance Director, South West Plains Regional Service Center, was in the audience and shared this testimony (Attachment 11).

The Chairman closed the hearing and stated due to time constraints **HB 2385** would be held over until next year.

The following written testimony was received: **SB 181** - Jim Keating, Kansas Fire Service Alliance (Attachment 12), Ernest Kutzley (Attachment 13), Joseph Ledbetter (Attachment 14), **HB 2330** - Terry Leatherman, Vice President of Legislative Affairs, KCCI (Attachment 15), Petroleum Marketers and Convenience Store Association of Kansas (Attachment 16), **HB 2385** - Terry Leatherman, Vice President of Legislative Affairs, KCCI (Attachment 17), Mike Taylor, Government Relations Director, City of Wichita (Attachment 18), Roger Werholtz, Secretary of Corrections (Attachment 19), Mark Tallman, Assistant Executive Director/Advocacy (Attachment 20), Dr. Kent Hurn, Assistant Lobbyist, United School Administrators of Kansas (Attachment 21), Hal Hudson, State Director, National Federation of Independent Business (Attachment 22) Don Moler, Executive Director, League of Kansas Municipalities (Attachment 23), David DeMoss, Executive Director, Southeast Kansas Education Service Center (Attachment 24), Judy A. Moler, General Counsel/Legislative Services Director (Attachment 25), Denise L. Everhart, Commissioner, Juvenile Justice Authority (Attachment 26).

The meeting adjourned at 9:55 a.m. and no further meetings are expected this session.





STATE OF KANSAS

ROB BOYER  
REPRESENTATIVE, 38TH DISTRICT  
JOHNSON COUNTY  
26412 W. 110TH TERR.  
OLATHE, KANSAS 66061  
(913) 915-1140  
300 SW 10TH AVE., ROOM 156-E  
TOPEKA, KANSAS 66612-1504  
(785) 296-7692  
(1-800) 432-3924  
boyer@house.state.ks.us



TOPEKA

HOUSE OF  
REPRESENTATIVES

April 2, 2003

COMMITTEE ASSIGNMENTS  
COMMERCE AND LABOR  
ECONOMIC DEVELOPMENT  
FINANCIAL INSTITUTIONS  
PUBLIC SAFETY BUDGET

House Commerce & Labor Committee

Dear Members of the Committee,

I am writing to encourage you to consider important changes to our State's worker's compensation law. The application of the law has become unfavorable to the business community and is resulting in double digit-increases in worker's comp premiums.

I offer my own company, Shred-it, as an example. I have been in business for the past seven years and have 36 employees. In those seven years, I have always encouraged safe practices and we have always had an active safety training program. With the exception of a few minor scratches and a twisted ankle our safety record is spotless. In fact, in seven years we have only had two worker's comp claims that were severe enough to warrant lost days. Both of them have been in the last two years and they are the subject of this letter.

The first was an employee who fell off the roof of his house while working on the weekend. He came in to work Monday morning complaining of soreness, but felt like he was "okay to go ahead and work." He left the office and returned an hour later complaining that his shoulder was hurting too much to continue. He acknowledged that he injured himself at home over the weekend. Consistent with federal law, we filed a worker's comp claim and sent him to the doctor. The results were inconclusive, but over the next twelve months we paid this individual \$42,000 in lost wages and medical expenses. Our insurance carrier, CNA, went to court against the individual and we lost. Kansas' courts sighted "aggravated injury on the job" as their reason for ruling with the employee. He injured himself at home and admitted as much, but the one hour he worked was enough to "aggravate" the injury and we paid even though we were clearly not responsible for his injury.

The second serious claim in my company's history involved an individual who came to work for me during the winter of 2002. On his third day on the job, he claimed that he slipped in the snow and hurt his hip. An MRI revealed that he was suffering from a degenerative hip defect that was slowly destabilizing his hip. Although the problem

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was genetic and his hip had been deteriorating since he was a child, we bought him a new hip for the price of \$26,000. Again, we fought in Kansas court and lost. The court sighted "aggravated injury on the job" as their reason for ruling with the employee.

I am a strong supporter of safety in the workplace, but this is ridiculous. Two claims, neither of which were the result of negligence on my part, yet I paid the price. People who say that Kansas is a no-fault system are wrong. Clearly in these two cases the fault was placed on my company and although the insurance company paid my experience mod went through the roof and my annual premiums increased by \$22,000--all for two injuries that were not my responsibility.

I encourage you to think about the burden being placed on Kansas' businesses. If it cost me, a small businessman, \$22,000 in increased premiums imagine what it is costing larger employers. It isn't even the money that's always the frustration. It's the knowledge that, as an employer, you can do everything right and still lose. It slaps in the face of entrepreneurial spirit, the desire to do right by your employees, and the fundamental belief that if you work hard and work honestly you will be successful. The intent of worker's comp is good, but the application in Kansas is out of balance.

Thank you for your time.

Sincerely,

Rep. Rob Boyer  
District 38

KANSAS

**Statement By  
Hal Hudson, State Director  
National Federation of Independent Business  
Presented to the  
House Commerce and Labor Committee  
On Senate Substitute for Senate Bill 181  
Wednesday, April 2, 2003**

Mr. Chairman and Members of the Committee:

On behalf of the 6,000 small business owners who are members of NFIB/Kansas, I appear today as a proponent of Senate Substitute for SB 181. I urge you to accept the bill before you without amendments that could delay its enactment.

The Kansas Workers Compensation Act has been in effect for many decades. Kansas employers have accepted the responsibility for paying millions of dollars a year in premiums to purchase Workers Compensation Insurance, for one basic reason.

The Workers Compensation Act sets up "NO-FAULT" exclusive remedy for dealing with problems related to on-the-job injuries of workers. The Act provides that employers' insurance will pay for medical expenses and a portion of wages lost as a result of job-related injuries.

Sub SB 181 has been carefully considered by a subcommittee of the Senate Commerce Committee, where it was amended to overcome objections of some opponents, recommended by the Senate Commerce Committee, and has been passed by the full Senate.

The two reforms in Sub SB 181 do not reduce an injured worker's benefits.

- 1) Employers still would be responsible for compensation for injuries caused by work. What Sub SB 181 would do is limit an employer's liability to ONLY those injuries that arise from a work-related injury. Sub SB 181 clarifies a reform enacted in 1993 to prevent misuse of work disability compensation.
- 2) A workers compensation case would not be revived when a worker loses his job. Kansas employers also pay millions of tax dollars a year into the Unemployment Compensation Fund to help workers who lose their jobs through no fault of their own. Sub SB 181 establishes that work disability is intended for workers unable to work for the wages they earned before and on-the-job injury, NOT for workers who lose their jobs for economic reasons.

Sub SB 181 presents an opportunity for you to approve legislation to help small business owners and the business climate in Kansas – not add more burdensome costs.

I urge you to approve Sub SB 181.



# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: [kcci@kansaschamber.org](mailto:kcci@kansaschamber.org) • [www.kansaschamber.org](http://www.kansaschamber.org)

## SB 181

April 2, 2003

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Committee on Commerce and Industry  
By Terry Leatherman, Vice President – Legislative Affairs

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the permitting me to explain why the Kansas Chamber supports Substitute for SB 181, as the Legislature's best opportunity to pass legislation to proactively improve the business climate in our state.

#### WORKERS COMPENSATION COSTS ARE ON THE RISE

1. On January 1, 2003, Kansas workers compensation insurance rates increased 1.9%. That will mean a premium increase of \$6 million on workers compensation insurance premiums paid by Kansas employers, and does not include increased expenses on employers who self-insure their workers compensation.
2. There has been explosive growth in the Kansas Assigned Risk Plan, the insurer of last resort in the state. This is an indication insurance companies do not see the workers compensation insurance market in Kansas to be healthy.

Year	Number of Businesses in the Kansas Assigned Risk Plan	Premium Volume of Businesses in the Kansas Assigned Risk Plan
1998	10,155	\$18,383,721
1999	9,771	\$17,255,352
2000	10,018	\$24,368,099
2001	9,737	\$35,717,034
2002	13,057	\$52,760,288

(year end totals, according to the National Council on Compensation Insurance)

3. There has also been significant growth in "loss cost multipliers" in Kansas in the past year. Loss Cost Multipliers are used to recoup administrative cost when building workers compensation insurance rates. In Kansas, these multipliers are evidence of the competitiveness of insurance. Lower multipliers reflect an insurance company's desire to secure a business' workers compensation insurance coverage. Since January of 2002 however,

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multiplier changes filed with the Kansas Insurance Department have been increasing. This reflects insurance companies feel they need more dollars to insure Kansas employers, and additional insurance costs which Kansas business pays.

- Since 1/1/02, there have been 138 changes in insurance company “loss cost multipliers” in Kansas. 131 times the multiplier increased (95%) and 7 times they decreased (5%).
- Of those 138 changes, the average “old” multiplier was 1.289. The average “new” multiplier was 1.445. That is an average multiplier increase of 12% in 15 months.

4. The Kansas Insurance Department and the Kansas Division of Workers Compensation have each released data showing clearly that workers compensation costs are on the rise.

Year	Direct Premiums Written	Direct Losses Incurred	% of Losses Incurred to Premiums
1997	\$261,121,536	\$134,603,154	51.5%
1998	\$250,588,819	\$126,164,370	50.3%
1999	\$251,341,523	\$179,376,781	71.4%
2000	\$271,480,320	\$159,226,348	64.4%
2001	\$291,575,463	\$237,335,832	88.1%

Source: Kansas Insurance Department Annual Report

Year	Losses Paid	Percent Change
1997	\$291,315,198	-----
1998	\$304,024,771	+4.4%
1999	\$317,136,633	+4.3%
2000	\$335,381,052	+5.8%
2001	\$371,093,424	+10.6%

Source: Kansas Division of Workers Compensation

5. To present a clear picture of the increased cost of workers compensation, the Kansas Self Insurers Association asked its members to relate their recent cost history in workers compensation. The results below show what these Kansas employers are reporting their recent experience has been.

Employer #1

Year	Cost Per Employee
2000	\$214.65
2001	\$419.48
2002	\$440.78

Employer #2

Year	Annual Payments	# of Employees	Excess Insurance
2000	\$22,037	1210	\$48,308
2001	\$443,747	1154	\$51,515
2002	\$495,624	1350	\$65,593

Employer #3

	2000	2001	2002
Paid Cost	\$999,756	\$1,629,212	\$2,068,976
# of Employees	11,228	10,063	7,885
Ave cost per Employee	\$89.04	\$161.90	\$262.39
# of claims	197	169	136
Cost per claim	\$5,074	\$9,640	\$15,213

Employer #4

Year	Total Losses	# of Employees	Excess Insurance
2001	\$182,128	3046	\$26,037
2002	\$207,770	3080	\$29,796

Employer #5

Year	Total Losses	# of Employees	Excess Insurance
2000	\$670,530	2,475	\$53,324
2001	\$665,562	2,383	\$112,289
2002	\$824,953	1,864	\$140,316

Employer #6

Year	Indemnity	Medical	Total	Excess Insurance	# of Claims
2001	\$781,734	900,035	\$1,719,764	\$53,324	512
2002	\$994,548	896,775	\$1,976,337	\$112,289	428
2003	???	??	????	\$140,316	???

Employer #7

Year	Medical	TTD/TPD	Settlement Awards	Total	# of Claims
97/98	\$561,788	\$156,763	\$257,836	\$976,389	469
98/99	\$751,675	\$169,543	\$245,191	\$1,166,409	485
99/00	\$878,692	\$192,383	\$189,831	\$1,260,907	422
00/01	\$929,881	\$190,184	\$443,436	\$1,563,502	497
01/02	\$1,110,980	\$255,634	\$432,440	\$1,799,054	476
02/03	\$809,857	\$186,813	\$236,155	\$1,232,827	175

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## WHAT SUBSTITUTE FOR SB 181 PROPOSES TO DO

Kansas employers are clearly facing significantly higher workers compensation insurance costs. However, Sub. for SB 181 does not propose to attempt to reduce those costs by slashing benefits paid to injured workers. Instead, the legislation attempts to address two areas of workers compensation which are costly and outside the scope of what employers should be responsible for compensating.

### 1) Pre-existing Conditions

- Reducing workers compensation awards where a pre-existing condition contributes to the worker's injury is already law in Kansas. Pre-existing condition language was one of the major reforms of the Act by the Kansas Legislature in 1993.
- Workers compensation is about providing care and compensation for a sudden incident at work. No questions are raised when the employee falls from a ladder or is hurt using industrial machinery. Work clearly caused the totality of the accident. The policy question in pre-existing conditions involves what an employer's responsibility should be when the worker's injury is substantially more than could be caused by the incident at work. For instance, the worker who suffers a back injury reaching for a book on a shelf. The injury is real, but pre-existing conditions is much more the cause than the work accident.
- The policy question has been decided. The 1993 Legislature declared an employer should pay compensation for the degree which work contributed to the injury, by reducing the amount of compensation by the degree of pre-existing conditions.
- Today's problem, from an employer's perspective, is a pre-existing condition determination is extremely difficult to obtain. Sub for SB 181 instead requires medical evidence to be used to determine how much an injury was caused by work. Sub. for SB 181 makes the 1993 reform applicable today.
- On the Senate floor, Sub. for SB 181 was amended to limit the pre-existing condition provision to limit its scope to situations where the condition has become symptomatic. This floor amendment limits the Legislature's 1993 intent by making employers responsible for compensating cases where a pre-existing condition contributed to the employee's condition, but the condition had been asymptomatic. The Kansas Chamber respectfully request Sub. for SB 181 be amended to return it to the Legislature's original intention.



- This provision involves a specific concern today for Kansas employers involving "work disability" compensation. Please recall work disability is that form of compensation awarded to workers who, due to their injury, are unable to return to work paying approximately what they made before their injury.
- In today's challenging economy, there has been significant economic loss of jobs. Unemployment compensation is the structural remedy for employees who lose their jobs during employment cut-backs.
- However, workers who have open workers compensation cases, when they are laid off from work, have applied to reopen their workers compensation cases. The case is presented they have had a prior work injury, they are not currently working, and they should now receive "work disability" compensation.
- The concept of work disability compensation is additional compensation to workers who suffer economic loss because THEIR INJURY prevents them from earning the money they could before they were hurt. However, in these cases, the economy is what is keeping them from working, not their work place injury.
- Sub. for SB 181 makes the test to qualify for work disability compensation whether the reason the worker is not working related to their injury. If an employer establishes the employee's dismissal was for economic or another work related reason, such as chronic absenteeism, work disability compensation would be denied. Conversely, if the employee shows their work injury prompted unemployment, they would qualify for work disability.

In conclusion, please consider these final thoughts on Sub. for SB 181.

- Exploding workers compensation costs appear to be arriving at a time when work place injuries are on the decline. According to the Annual Statistical Report of the Kansas Division of Workers Compensation, the incident rate for occupational injury and illness for workers at Kansas manufacturing plants has declined for eight straight years. Declines have also been seen in recent years in construction, transportation, utility and mining industries in Kansas.
- A decade has now passed since the last time employer concerns about the workers compensation system have been addressed in Kansas.
- During these troubling economic times, with the potential of business tax increases looming at the Kansas Statehouse, Sub. for SB 181 represents the best opportunity for lawmakers to approve legislation to improve the business climate in Kansas.

Chairman, thank you for holding this hearing on this important legislation to the Kansas business community.

On behalf of the Kansas Chamber, we urge the Committee approve Sub. for SB 181. I would be happy to answer any questions.

**About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

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

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3  
4 **Substitute for SENATE BILL No. 181**

5  
6 By Committee on Commerce

7  
8 3-18

9  
10 AN ACT concerning workers compensation; relating to work disability;  
11 amending K.S.A. 44-501 and 44-510e and repealing the existing sec-  
12 tions; also repealing K.S.A. 44-510a.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 44-501 is hereby amended to read as follows: 44-  
16 501. (a) If in any employment to which the workers compensation act  
17 applies, personal injury by accident arising out of and in the course of  
18 employment is caused to an employee, the employer shall be liable to pay  
19 compensation to the employee in accordance with the provisions of the  
20 workers compensation act. In proceedings under the workers compen-  
21 sation act, the burden of proof shall be on the claimant to establish the  
22 claimant's right to an award of compensation and to prove the various  
23 conditions on which the claimant's right depends. In determining whether  
24 the claimant has satisfied this burden of proof, the trier of fact shall con-  
25 sider the whole record.

26 (b) Except as provided in the workers compensation act, no em-  
27 ployer, or other employee of such employer, shall be liable for any injury  
28 for which compensation is recoverable under the workers compensation  
29 act nor shall an employer be liable to any third party for any injury or  
30 death of an employee which was caused under circumstances creating a  
31 legal liability against a third party and for which workers compensation is  
32 payable by such employer.

33 (c) The employee shall not be entitled to recover for the aggravation  
34 of a preexisting condition, except to the extent that the work-related injury  
35 causes increased *functional impairment or disability*. *A prior impairment*  
36 *rating or permanent restrictions are not necessary to prove preexisting*  
37 ~~*symptomatic*~~ *functional impairment or disability*. *The trier of fact shall*  
38 *consider all medical testimony on the issue of preexisting impairment or*  
39 *disability. Any award of compensation shall be reduced determined by*  
40 *showing, through medical evidence, the amount of functional impairment*  
41 *determined to be preexisting or disability caused by work activity for the*  
42 *employer from whom the employee is seeking compensation.*

43 (d) (1) If the injury to the employee results from the employee's

→ , whether symptomatic or asymptomatic

## SB 181 Testimony submitted April 2, 2003

Thank you, Chairman Dahl, members of the committee. I am Amy Garcia, an occupational health nurse; I speak today for the 1350 small business owners who are members of the Wichita Independent Business Association. We support Senate Bill 181.

Impact on Small Business Workers compensation premiums and costs associated with lost time are a **major, bottom line expense** for small businesses. For many of us, work comp is the 2nd most expensive benefit behind salaries and it is extremely difficult to replace the lost work. It is inaccurate to think that insurance picks up these costs, as they are passed back to us through increased premiums for 3 years! Additionally, loss cost multipliers have increased 12% in 2002 and use of the Assigned Risk Pool is up. **Many times, these costs eliminate profits; at the very least they consume revenues that could be used for business growth – and new jobs.** As small business creates 75% of all new jobs, this has serious implications for an already stressed economy.

Pre Existing Conditions Employers have been frustrated by **paying for pre-existing conditions through workers compensation instead of health insurance.** I have had experience with people who started a job knowing that they needed surgery for a shoulder, a knee or their back, and filed a workers compensation claims within days. I once worked on a case where a small nursing home paid a permanent award following carpal tunnel surgery – and the claimant had clocked less than one hour of employment. The claimant may receive temporary disability payments and may receive a cash award for permanent disability. These “benefits” are not available when treating conditions with the help of traditional health insurance.

**The careful balance struck by the 1993 reforms has steadily been eroded by inconsistent court rulings on pre-existing conditions.** What should happen is that if an employee’s pre-existing condition contributes to the post injury condition, the award should be reduced. This rarely happens. Senate Bill 181 helps to clarify the requirements and reaffirm the KS policy that **workers should be compensated for the amount of injury caused by the work they perform.** The bill simply prevents misuse of work disability compensation.

What SB 181 does not do **SB 181 does not reduce benefits.** Employers are still responsible for injuries caused by work. Employers are still responsible for providing initial care when an employee claims injury. Further, **SB 181 does not invalidate compensation for work disability** but does clarify situations related to economic layoffs.

Small business support **The Wichita Independent Business Association members urge you to support SB 181.** Employees are the essence of small business. We care about our people and want to prevent injuries and provide appropriate benefits. **This bill is a good opportunity for you to improve the business climate for all businesses in Kansas.**

Amy Garcia RN for the Wichita Independent Business Association  
Mid America Orthopaedics 221 S. Topeka Wichita, KS 67202  
316-264-8601 algar1020@wichitausea.com

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# Kansas Coalition for Workplace Safety

Promoting Economic Security Through Workplace Safety for Kansas Workers and their Families.

## Coalition Members:

International  
Association of Fire  
Fighters  
Local 64

International  
Association of Fire  
Fighters  
Local 83

International  
Association  
of Machinists  
District Lodge No. 70

Kansas AFL-CIO

Kansas State  
Firefighters  
Association

Kansas State Nurses  
Association

Kansas State Fire  
Fighters Association

Kansas Trial Lawyers  
Association

Teamsters Local No.  
696

Tri-County Labor  
Council

United Auto Workers  
Local No. 31

United Steelworkers

United Steelworkers  
Local #307

Wichita-Hutchinson  
Labor Federation  
of Central Kansas

## Commerce Committee Testimony on Substitute for S.B. 181

April 2, 2003

Chairman Dahl and members of the House Commerce & Industry Committee, my name is Terri Roberts and I am here today to testify on behalf of the Kansas Coalition for Workplace Safety and the Kansas State Nurses Association, a member of the Coalition.

Before my formal statements, there is something I want to clarify that was heard during Senate Committee Testimony. The KCCI alluded to in testimony that the Court isn't following the intent of the 1993 reform legislation. We contacted former Senator Mike Harris who was one of the author's of the bill and asked him to review Sub. SB 181. His comments indicated that he believes the current practice of using the AMA Guide for both sides is consistent and fair to both employees and employers and that there appears to be no need for this bill.

## BROKEN PROMISES

In 1911, the Kansas Legislature enacted the state's first law governing workers compensation, in which businesses promised, without regard to fault, to furnish timely medical care and pay for the lost wages and permanent losses of injured workers. In exchange, employees gave up their ability to sue for damages to be determined by a jury. Now, more than 90 years later, SB 181 seeks to renege on this essential promise of compensation to injured workers and their families.

This proposal could not come at a worse time for Kansas workers. Each year, tens of thousands of Kansas workers are injured on the job. In FY 2002 alone, 72,825 job-related injuries and illnesses were reported to the Kansas Division of Workers Compensation. *That amounts to 200 injuries and illnesses each day.* More disturbing, the number of work-related fatalities in Kansas jumped to 53 employees in FY 2002, up from 44 in FY 2001. Since 1994, Kansas has consistently exceeded the national rate for workplace illnesses and injuries, according to the Bureau of Labor Statistics. In FY 2002, Kansas' over all injury and illness rate for private industry was 7.8 per 100 full-time workers, compared with 6.1 for the U.S. as a whole.

Adding insult to injury, for the more than 20,000 Kansas employees whose injuries resulted in lost time from work, hospitalization or death in FY 2002, the Kansas workers compensation system offered some of *the lowest benefits in the nation.* Benefits rates in Kansas are set at two-thirds of the employee's gross average weekly wage. The maximum weekly benefit an injured worker can receive is now \$432, or \$22,464 a year—only a few thousand dollars above the U.S. poverty threshold of \$18,556 for a family of four.

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For workers with the most serious injuries, those that result in total permanent disability, Kansas offers little compensation. Just ask Leland Glaser, a former HVAC technician, who testified before members of the Senate Commerce Committee on SB 181. Mr. Glaser was totally disabled when he fell from a ladder while at work and now relies heavily on a wheelchair.

“After my injury, I had to completely wipe out my savings,” Mr. Glaser testified. “I sold all of my tools...I sold savings bonds worth about \$2,000. When I had exhausted all of my financial resources, I had to move to cheaper housing. Even after that, my family was not able to adjust to the dramatic drop in income that resulted from my disability. My wife and I had to file bankruptcy.”

While Mr. Glaser and other injured Kansas workers try to make ends meet on substandard workers compensation benefits, workers compensation *insurance carriers in Kansas enjoyed years of above-average profits*. According to statistics from the National Association of Insurance Commissioner, from 1993 to 2000, Kansas carrier earned 13.8% in after-tax profits—higher than the nationwide average of 11.7%. Similarly, Kansas employers have also benefited, paying some of the lowest rates for workers compensation insurance in the nation.

Despite these facts, Substitute SB 181 proposes “modifications” to the Kansas Workers Compensation Act that slash Kansas’ already inadequate benefits to injured workers. This bill tramples on the benefits of every worker in Kansas, from the boardroom to the boiler room, making Kansas one of the most undesirable work environments in the nation.

- Nothing in Substitute for SB 181 addresses the need for improved workplace safety.
- Nothing in SB 181 mandates that insurance companies pass along their profits to Kansas employers in the form of lower insurance premiums.
- Substitute for SB 181 “succeeds” only in further devaluing the Kansas worker, further enriching Kansas workers compensation insurance carriers, and further undermining the promise employers made to Kansas workers in 1911.

Choose Kansas families and workers over insurance companies. Reject Substitute SB 181.

Terri Roberts, J.D., R.N.  
Executive Director  
Kansas State Nurses Association  
1208 SW Tyler  
Topeka, Kansas 66612  
785-233-8638 Fax 785-233-5222  
troberts@ksna.net

TESTIMONY BY KANSAS AFL-CIO  
IN OPPOSITION TO SUBSTITUTE FOR SB 181  
PRESENTED TO  
HOUSE COMMERCE & LABOR COMMITTEE  
BY  
JOHN M. OSTROWSKI  
APRIL 2, 2003

Mr. Chairman and Members of the Committee:

The Kansas AFL-CIO **opposes** Substitute for SB 181. The Kansas AFL-CIO has numerous reasons for opposing the bill, but today, seeks to emphasize the fact that this is "a solution in search of a problem."

First of all, it needs to be clearly understood that Sub for SB 181 is nothing more than an effort to further reduce benefits to injured workers. Proponents have indicated in prior testimony that the bill seeks to "end abuses in the system," and "enforce the intent of the 1993 amendments," and "control liberal judges," etc. Be assured that this bill has nothing to do with any matter other than a reduction in benefits for injured workers.

The question becomes, why is the Kansas Legislature again seeking to reduce benefits to workers? Historically, when so-called "reform" of the Workers Compensation Act has been attempted, it is in an effort to reduce premiums to employers. The problem is that premiums, in Kansas, are well under control according to proponents' own sources of information.

There is no debate that Kansas has the lowest cost in the region (tab 1 of "yellow book"). The numbers shown on tab 1 are from the NCCI meeting held June 5, 2002. NCCI is generally recognized as the source which insurance companies rely on. Furthermore, on a nationwide basis, Kansas is again very low in premiums charged. You can see on tab 2 that Kansas ranked 41<sup>st</sup> in the nation in premiums in 2002, whereas Oklahoma was 18<sup>th</sup>, Colorado was 20<sup>th</sup>, and Missouri was 25<sup>th</sup>. Again, the source of this information is a "neutral party" and the Oregon study was endorsed by Phil Harness, Acting Director of Workers Compensation.

Remember that premiums are based on payouts. It is no different in workers' compensation than auto insurance. If Kansas drivers are very safe, and have few accidents, auto premiums should be low in Kansas. Proponents of this bill indicate that the fact premiums are low and stable is only "part of the story." They are asking that the legislature be aware of "loss cost multipliers." While premiums are regulated, so-called loss cost multipliers are not.

Loss cost multipliers is a percentage increase that the insurance companies add to cover transaction costs, their costs, and profits. We know that what drives loss cost multipliers **has nothing to do with benefits paid to workers**. Loss cost multipliers are driven by things like the war in Iraq, the stock market, and the economy. As noted by Mr. Arnold's article in the Wichita Business Journal (Tab 3):

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The rates cited by the insurance department are the pure rates... Each company files its own loss cost multiplier, so it's difficult to say if rates are going up or down because they can vary enormously from company to company... insurance companies have also increased multipliers in recent years to help make up company losses from the downturn in the economy and the stock market.

Simply stated, in past years, insurance companies might sell a dollar's worth of coverage for 90 cents. Although they lose money on the premium, by taking the money in and investing it, they will make more than the dollar they should have charged. Now, the stock market and economy are down, so insurance companies want to charge a \$1.10 to provide a dollar's worth of premiums. Injured workers are also suffering in this economy. It seems patently unfair to cut their benefits to make up for poor investments pursued by the insurance carriers—thereby guaranteeing insurance companies a nice profit.

Two other points are worth noting. Kansas insurance companies have enjoyed a higher profit than other insurance companies on a nationwide level. (Appendix 2, yellow book) Furthermore, in the last ten years, premiums for Kansas employers are down approximately 63% (Exhibit 1 attached hereto showing decreases without 1997. Most people involved with the system acknowledge that 1997 was probably halfway between 1996 and 1998, or an approximate 14% reduction making the overall premium reduction roughly 63%.)

Proponents have attempted to indicate that there is real concern over self-insureds. As proof, they presented in the Senate Subcommittee alleged “hard numbers” to support their position. (Tab 4) We have no idea where these seven examples come from, who they represent, or any other information. However, a review of Appendix 8 actually shows significant decreased payouts for many self-insureds. For example, in comparing 2001 with 2002, Blue Cross/Blue Shield is down \$75,000, City of Emporia down \$50,000, City of Hutchinson down \$400,000, Excel down \$300,000, Hallmark down \$100,000, and General Motors down 2 million dollars!

In short, it is difficult to know exactly what is happening with self-insureds. Some are down significantly, others are up. Self-insureds are totally unregulated in their reporting, so it is also difficult to tell whether we are dealing with “apples or oranges.” Having said that, it is illogical to assume with low “pure premiums” (see above; Arnold article) that self-insureds are struggling. In multiple “closed claims studies”, self-insureds traditionally have lower payouts because they control medical costs better and return injured workers to work quicker.

It is also quite clear that if rates are being driven up, it is due to medical costs. (Tabs 5, 6 and 7) This bill does nothing to address rising medical costs.

In conclusion:

\*\*\* This is a benefit reduction bill.

\*\*\* Premiums in Kansas are low and stable.



- \*\*\* Increases in premiums are not due to increased payouts, but rather, loss cost multipliers which is nothing more than an unregulated protection of insurance company profits.
- \*\*\* Medical costs are driving payouts and this bill does not address medical costs.
- \*\*\* Proponents of this Bill do not even indicate that premiums will fall or stabilize with passage of this Bill.

In short, the Bill is unnecessary, solves nothing, and should be defeated.

I will stand for questions.

## HARD EVIDENCE ON WORK COMP COST TO BUSINESS

From History of the Kansas Workers Compensation Rate Filings compiled by NCCI,

1994	- 7.5% (combined voluntary and assigned risk)
1995	10.4%
1996	-11.5%
1997	Unknown
1998	-17.2%
1999	- 4.2%
2000	- 0.7%
2001	+4.3%
2002	- 4.0%
2003	+1.9%

Since the current law has been enacted in 1993, employers have seen a total overall reduction in premiums of 49.3%.

Mr. Leatherman says that a 1.9% increase in 2003 equates to nearly \$6 Million. Using the same ratio, a 49.3% decrease would equal \$98.6 Million in savings over the last 9 years.

The hard numbers from reliable sources on workers compensation insurance rate increases do not reflect overall any substantial problem.

If we assume a 14% reduction for 1997 (a figure generally accepted), the overall 10 year premium reduction would be roughly 63% for 10 years.

EXHIBIT 1

6-4

TO: Members of the House Business, Commerce and Labor Committee

FROM: Jeff K. Cooper  
Kansas Trial Lawyers Association

RE: 2003 Sub. SB 181

DATE: April 2, 2003

Chairman Dahl and members of the House Business, Commerce and Labor Committee, I am Jeff Cooper, a Topeka attorney. I appear before you today on behalf of the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to appear before you today in opposition to Sub. SB 181.

Most Kansas employees are covered by the Workers Compensation system. We, and our families, depend on this system to protect us from the financial consequences of workplace injuries and illnesses. Our current system offers minimal protection to Kansans who are injured on the job. KTLA opposed the original version of SB 181 and we continue to oppose the substitute version of the bill. The bill not only slashes workers compensation benefits to workers – benefits that are already among the lowest in the nation – but does nothing to improve work place safety.

This legislation will erode the rights of Kansans with disabilities from on-the-job injuries. It targets injured workers by creating incentives for employers to lay-off injured workers, resulting in a disposable work force. Sub. SB 181 exempts employers from having to play by the rules. Under current law, the AMA Guides (4<sup>th</sup> edition) are used by employers and employees as the accepted medical guidelines. Sub. SB 181 creates a double-standard that favors insurance companies at the expense of injured workers.

The proponents of the bill are attempting to circumvent the current statutory procedure by introducing legislation that has not been reviewed and studied by the Workers Compensation Advisory Council. Created by statute in 1993, the council is charged with the review and recommendation of legislation amending, supplementing or affecting workers compensation. There should be no legislative action on Sub. SB 181 until the Advisory Council has reviewed the bill and made its recommendations.

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## **Preexisting**

1. Not Needed: Current Court of Appeals and Appeals Board cases clearly show that the employer is given credit for preexisting impairment under current law.
2. Currently both parties (employer and employee) are required to use the American Medical Association Guides to the Evaluation of Permanent Impairment.

This provision (page 1 lines 34 through 40) changes the burden of proof and lowers the burden on employers. The proposed amendment does not require the use of the AMA Guides by the employer.

3. Current law requires the Administrative Law Judge to use the entire record (evidence) to decide the case.
4. The proposed provision conflicts with other statutes and other provisions of the current law which require impairment or disability to be caused by an injury by accident. The proposed change (any award of compensation shall be determined by showing, through medical evidence, the amount of functional impairment or disability caused by work activities for the employer from whom the employee is seeking compensation). This provision makes the test "work activity" not injury by accident. An example would be a UPS Driver who is injured when their vehicle is struck by a car. Under this provision, the work activity, i.e., delivering boxes, did not cause the impairment or disability, rather the motor vehicle accident caused the impairment or disability.

## **So-called Layoff Economic Provision**

1. Nothing in this proposed amendment mentions economic layoff or economic factors in any way.
2. Substitute Senate Bill 181 eliminates work disability benefits for disabled workers who are laid off from work while their claim is pending and before work restrictions are in place.
3. With this proposed amendment there will be a lack of any incentive on behalf of the employers to accommodate injured workers and will result in a disposable workforce for this provision.
4. Employees who are unable to work without restrictions and accommodation and who are then laid off due to an economic slow down, will not have a job, will not be entitled to voc rehab benefits, and will not be entitled to work disability. Those individuals will be left without a safety net to retrain or provide for their families, and most likely would end up as a burden to the State in the form of public assistance.

**Taylor Oil, Inc.**  
**504 Main**  
**PO Box 581**  
**Wellsville, KS 66092**  
**(785) 883-2072**

April 1, 2003

Mr. Chairman and committee members. Thank you for allowing me this time to testify on House Bill No. 2330.

My name is Curt Wright. I am Vice President of Taylor Oil, Inc. Taylor Oil is a family owned petroleum marketer in Wellsville, KS. We operate 5 convenience stores in Ottawa, Spring Hill, Emporia and Lyndon and 1 full service gas station in Gardner. We employ more than 70 people.

I urge you to support House Bill No. 2330.

My testimony today concerns the practice of selling gasoline below cost to damage competition in a market. Two of our stores are in Ottawa, one is branded Amoco and the other is branded Cenex that we lease from the local Co-Op. In this market we have a competitor (Mirastar) that routinely sells gasoline below my buying price from BP Amoco. As you can see on the attached sheets the competitor consistently sells gasoline at a price below even the cheapest price I have available to me. I receive pricing from 9 different suppliers. Mirastar sold fuel below my cost on 49 of 73 days and below the cheapest price I had available on 32 of 73 days. I can gather additional information from earlier in 2002 showing a similar pricing strategy. How are they doing this? I don't know the complete answer but Mirastar is owned by Tesoro. Tesoro is primarily a refiner of petroleum products. A refiner has the ability to subsidize their retail gasoline price with profits earned from the refining and exploration sides of the petroleum business. A refiner can use their retail price of gasoline to drive the refining part of their business. The pricing strategy Tesoro has chosen will soon force most, if not all, of the small retailers out of the marketplace. In 2002, I sold 27% less gasoline and 15% less inside my store than I did the year before Mirastar opened. The inside sales decrease happened at the same time we have seen unprecedented price increases in tobacco products. I can think of no other industry the price of one product means so much to the success of your business. Several newspapers devote a regular section of the paper and their websites to tell the consumer the cheapest price of gas in a market. Do they bother to tell who might be one cent per gallon higher? If Mirastar continues with this same strategy I will lose less money by simply locking the doors of my 2 stores in Ottawa. These two stores account for 25 to 30 employees and over 1.5 million dollars worth of investment by small businesses in Ottawa. This testimony was originally drafted for a hearing scheduled for the latter part of February. I think there is one fact that is extremely important for the committee to know; in the 48 days since this bill was introduced on February 12<sup>th</sup>, my competitor has been below my cost on only two days in Mid-March. Coincidence or not? I don't know the answer to that question.

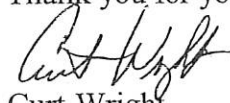
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There are additional reasons to support this legislation as well. Large companies continue to dominate today's marketplace. Many of these companies are located outside the state of Kansas and they take their profits outside the boundaries of this state to benefit people from other states. Again an example of this is in Ottawa. A few years ago Wal-Mart built a new SuperCenter that features groceries. At the time of their opening there were 4 locally owned grocery stores in Ottawa. Now there is one besides the Wal-Mart location. A large part of preserving competition is to preserve choice. If Mirastar continues the same gasoline pricing strategy in Ottawa, the choices will be greatly reduced in the near future.

Lastly, I would urge you to support this bill because it is just not good public policy to allow some company to take a precious natural resource and use it as a loss leader to drive their business. How is the country ever going to learn how to conserve? And better yet why should we develop alternative sources of energy when those available to us now are being treated as if there will always be plenty available?

Thank you for your time and I will try to answer any questions you may have.

  
Curt Wright  
VP Operations

# Rice Analysis for Ottawa, KS Market

A	B	C	D	E	F	G	H	I	J	K
Date	My Retail Price	Mirastar Retail Price	BP Amoco Cost	My Cheapest Cost	Taxes and Fees	Freight	My Profit to BP Cost	My Profit to Cheapest	Mirastar Profit to BP Cost	Mirastar Profit to Cheapest
02/21/2003	1.599	1.589	1.081	1.03182	0.4143	0.0228	0.08090	0.13008	0.07090	0.12008
02/20/2003	1.599	1.589	1.104	1.0596	0.4143	0.0228	0.05790	0.10230	0.04790	0.09230
02/19/2003	1.599	1.569	1.099	1.04697	0.4143	0.0228	0.06290	0.11493	0.03290	0.08493
02/18/2003	1.599	1.569	1.103	1.06263	0.4143	0.0228	0.05890	0.09927	0.02890	0.06927
02/17/2003	1.599	1.569	1.108	1.06768	0.4143	0.0228	0.05390	0.09422	0.02390	0.06422
02/16/2003	1.599	1.569	1.108	1.06768	0.4143	0.0228	0.05390	0.09422	0.02390	0.06422
02/15/2003	1.599	1.569	1.108	1.06768	0.4143	0.0228	0.05390	0.09422	0.02390	0.06422
02/14/2003	1.599	1.569	1.117	1.07626	0.4143	0.0228	0.04490	0.08564	0.01490	0.05564
02/13/2003	1.599	1.569	1.117	1.08081	0.4143	0.0228	0.04490	0.08109	0.01490	0.05109
02/12/2003	1.559	1.549	1.135	1.10101	0.4143	0.0228	-0.01310	0.02089	-0.02310	0.01089
02/11/2003	1.559	1.539	1.112	1.07172	0.4143	0.0228	0.00990	0.05018	-0.01010	0.03018
02/10/2003	1.559	1.539	1.13	1.1155	0.4143	0.0228	-0.00810	0.00640	-0.02810	-0.01360
02/09/2003	1.559	1.529	1.13	1.1155	0.4143	0.0228	-0.00810	0.00640	-0.03810	-0.02360
02/08/2003	1.559	1.529	1.13	1.1155	0.4143	0.0228	-0.00810	0.00640	-0.03810	-0.02360
02/07/2003	1.559	1.529	1.091	1.07172	0.4143	0.0228	0.03090	0.05018	0.00090	0.02018
02/06/2003	1.559	1.529	1.101	1.07828	0.4143	0.0228	0.02090	0.04362	-0.00910	0.01362
02/05/2003	1.559	1.529	1.063	1.0435	0.4143	0.0228	0.05890	0.07840	0.02890	0.04840
02/04/2003	1.559	1.529	1.024	0.99747	0.4143	0.0228	0.09790	0.12443	0.06790	0.09443
02/03/2003	1.459	1.439	1.029	1.00606	0.4143	0.0228	-0.00710	0.01584	-0.02710	-0.00416
02/02/2003	1.459	1.399	1.029	1.00606	0.4143	0.0228	-0.00710	0.01584	-0.06710	-0.04416
02/01/2003	1.459	1.399	1.029	1.00606	0.4143	0.0228	-0.00710	0.01584	-0.06710	-0.04416
01/31/2003	1.459	1.369	1.036	1.0101	0.4143	0.0228	-0.01410	0.01180	-0.10410	-0.07820
01/30/2003	1.459	1.369	1.019	0.999	0.4143	0.0228	0.00290	0.02290	-0.08710	-0.06710
01/29/2003	1.459	1.369	0.973	0.95354	0.4143	0.0228	0.04890	0.06836	-0.04110	-0.02164
01/28/2003	1.429	1.329	0.942	0.9202	0.4143	0.0228	0.04990	0.07170	-0.05010	-0.02830
01/27/2003	1.429	1.329	0.942	0.93081	0.4143	0.0228	0.04990	0.06109	-0.05010	-0.03891
01/26/2003	1.349	1.329	0.942	0.93081	0.4143	0.0228	-0.03010	-0.01891	-0.05010	-0.03891
01/25/2003	1.349	1.329	0.942	0.93081	0.4143	0.0228	-0.03010	-0.01891	-0.05010	-0.03891
01/24/2003	1.349	1.329	0.903	0.89293	0.4143	0.0228	0.00890	0.01897	-0.01110	-0.00103
01/23/2003	1.349	1.329	0.903	0.8904	0.4143	0.0228	0.00890	0.02150	-0.01110	0.00150
01/22/2003	1.349	1.329	0.881	0.8595	0.4143	0.0228	0.03090	0.05240	0.01090	0.03240
1/21/2003	1.349	1.329	0.885	0.85758	0.4143	0.0228	0.02690	0.05432	0.00690	0.03432
1/20/2003	1.349	1.319	0.885	0.85606	0.4143	0.0228	0.02690	0.05584	-0.00310	0.02584



# rice Analysis for Ottawa, KS Market

A	B	C	D	E	F	G	H	I	J	K
Date	My Retail Price	Mirastar Retail Price	BP Amoco Cost	My Cheapest Cost	Taxes and Fees	Freight	My Profit to BP Cost	My Profit to Cheapest	Mirastar Profit to BP Cost	Mirastar Profit to Cheapest
01/19/2003	1.349	1.319	0.885	0.85606	0.4143	0.0228	0.02690	0.05584	-0.00310	0.02584
01/18/2003	1.349	1.319	0.885	0.85606	0.4143	0.0228	0.02690	0.05584	-0.00310	0.02584
01/17/2003	1.349	1.319	0.892	0.85606	0.4143	0.0228	0.01990	0.05584	-0.01010	0.02584
01/16/2003	1.349	1.319	0.892	0.86364	0.4143	0.0228	0.01990	0.04826	-0.01010	0.01826
01/15/2003	1.349	1.319	0.883	0.86364	0.4143	0.0228	0.02890	0.04826	-0.00110	0.01826
01/14/2003	1.349	1.319	0.892	0.86616	0.4143	0.0228	0.01990	0.04574	-0.01010	0.01574
01/13/2003	1.349	1.339	0.881	0.84747	0.4143	0.0228	0.03090	0.06443	0.02090	0.05443
01/12/2003	1.349	1.339	0.881	0.84747	0.4143	0.0228	0.03090	0.06443	0.02090	0.05443
01/11/2003	1.349	1.339	0.881	0.84747	0.4143	0.0228	0.03090	0.06443	0.02090	0.05443
01/10/2003	1.349	1.339	0.891	0.86869	0.4143	0.0228	0.02090	0.04321	0.01090	0.03321
01/09/2003	1.349	1.339	0.868	0.82071	0.4143	0.0228	0.04390	0.09119	0.03390	0.08119
01/08/2003	1.349	1.339	0.874	0.82828	0.4143	0.0228	0.03790	0.08362	0.02790	0.07362
01/07/2003	1.349	1.339	0.902	0.87677	0.4143	0.0228	0.00990	0.03513	-0.00010	0.02513
01/06/2003	1.349	1.339	0.927	0.91566	0.4143	0.0228	-0.01510	-0.00376	-0.02510	-0.01376
01/05/2003	1.349	1.339	0.927	0.91566	0.4143	0.0228	-0.01510	-0.00376	-0.02510	-0.01376
01/04/2003	1.349	1.339	0.927	0.91566	0.4143	0.0228	-0.01510	-0.00376	-0.02510	-0.01376
01/03/2003	1.349	1.339	0.909	0.88788	0.4143	0.0228	0.00290	0.02402	-0.00710	0.01402
01/02/2003	1.349	1.339	0.912	0.87727	0.4143	0.0228	-0.00010	0.03463	-0.01010	0.02463
01/01/2003	1.349	1.339	0.912	0.87727	0.4143	0.0228	-0.00010	0.03463	-0.01010	0.02463
12/31/2002	1.349	1.369	0.903	0.8795	0.4143	0.0228	0.00890	0.03240	0.02890	0.05240
12/30/2002	1.349	1.349	0.927	0.9245	0.4143	0.0228	-0.01510	-0.01260	-0.01510	-0.01260
12/29/2002	1.349	1.299	0.927	0.9245	0.4143	0.0228	-0.01510	-0.01260	-0.06510	-0.06260
12/28/2002	1.349	1.299	0.927	0.9245	0.4143	0.0228	-0.01510	-0.01260	-0.06510	-0.06260
12/27/2002	1.349	1.299	0.922	0.922	0.4143	0.0228	-0.01010	-0.01010	-0.06010	-0.06010
12/26/2002	1.329	1.299	0.922	0.9045	0.4143	0.0228	-0.03010	-0.01260	-0.06010	-0.04260
12/25/2002	1.379	1.299	0.922	0.9045	0.4143	0.0228	0.01990	0.03740	-0.06010	-0.04260
12/24/2002	1.299	1.299	0.922	0.9045	0.4143	0.0228	-0.06010	-0.04260	-0.06010	-0.04260
12/23/2002	1.299	1.299	0.881	0.87273	0.4143	0.0228	-0.01910	-0.01083	-0.01910	-0.01083
12/22/2002	1.299	1.299	0.881	0.8596	0.4143	0.0228	-0.01910	0.00230	-0.01910	0.00230
12/21/2002	1.359	1.299	0.881	0.87273	0.4143	0.0228	0.04090	0.04917	-0.01910	-0.01083
12/20/2002	1.359	1.299	0.881	0.8596	0.4143	0.0228	0.04090	0.06230	-0.01910	0.00230
12/19/2002	1.329	1.249	0.873	0.84747	0.4143	0.0228	0.01890	0.04443	-0.06110	-0.03557
12/18/2002	1.329	1.249	0.845	0.84293	0.4143	0.0228	0.04690	0.04897	-0.03310	-0.03103

8-A

## Price Analysis for Ottawa, KS Market

A	B	C	D	E	F	G	H	I	J	K
Date	My Retail Price	Mirastar Retail Price	BP Amoco Cost	My Cheapest Cost	Taxes and Fees	Freight	My Profit to BP Cost	My Profit to Cheapest	Mirastar Profit to BP Cost	Mirastar Profit to Cheapest
12/17/2002	1.329	1.249	0.878	0.849	0.4143	0.0228	0.01390	0.04290	-0.06610	-0.03710
12/16/2002	1.249	1.249	0.83	0.819	0.4143	0.0228	-0.01810	-0.00710	-0.01810	-0.00710
12/15/2002	1.249	1.249	0.83	0.819	0.4143	0.0228	-0.01810	-0.00710	-0.01810	-0.00710
12/14/2002	1.249	1.249	0.83	0.819	0.4143	0.0228	-0.01810	-0.00710	-0.01810	-0.00710
12/13/2002	1.329	1.249	0.803	0.8	0.4143	0.0228	0.08890	0.09190	0.00890	0.01190
12/12/2002	1.259	1.249	0.773	0.7702	0.4143	0.0228	0.04890	0.05170	0.03890	0.04170
12/11/2002	1.259	1.249	0.788	0.7798	0.4143	0.0228	0.03390	0.04210	0.02390	0.03210

### Explanation of Columns

- A Date
- B My Retail price for 87 octane regular unleaded at Ottawa Amoco at 2305 S. Cedar, Ottawa, KS
- C Mirastar Retail price for 87 octane regular unleaded in the Wal-Mart parking lot in Ottawa, KS
- D BP Amoco cost of Amoco 87 octane regular unleaded gasoline
- E The cheapest I could buy 87 octane regular unleaded if my store was not branded Amoco
- F Federal and State taxes and fees (.184 federal taxes, .23 state taxes, and .0003 state inspection fee)
- G My cost for freight from BP Amoco terminal in Sugar Creek, MO to Ottawa, KS
- H Profit between my Retail price and my cost from BP Amoco
- I Profit between my Retail price and my cheapest available price if I was not branded Amoco
- J Profit between Mirastar Retail price and my cost from BP Amoco
- K Profit between Mirastar Retail price and my cheapest available price

ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.  
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.  
ALAN F. ALDERSON\*  
JOSEPH M. WEILER  
DARIN M. CONKLIN  
MARK A. BURGHART\*  
DANIEL W. CROW\*\*  
MICHELLE L. MILLER

2101 S.W. 21ST STREET  
TOPEKA, KANSAS 66604-3174  
MAILING ADDRESS: P.O. BOX 237  
TOPEKA, KANSAS 66601-0237

(785) 232-0753  
FACSIMILE: (785) 232-1866  
WEB SITE: [www.aldersonlaw.com](http://www.aldersonlaw.com)

OF COUNSEL:  
BRIAN FROST  
THOMAS C. HENDERSON

LL.M., TAXATION  
\*LICENSED TO PRACTICE IN  
KANSAS AND MISSOURI

TESTIMONY OF BOB ALDERSON

ON BEHALF OF CASEY'S GENERAL STORES, INC.

IN OPPOSITION TO LEGISLATION PROHIBITING

BELOW COST SELLING OF MOTOR FUELS

April 2, 2003

Chairman Dahl and Members of the House Committee on Commerce  
and Labor:

I am Bob Alderson, an attorney in private practice in Topeka,  
and I am appearing today on behalf of Casey's General Stores,  
Inc. ("Casey's") in opposition to House Bill No. 2330.

Casey's has more than 100 convenience stores located in  
Kansas, and these stores employ in excess of 800 people with  
an annual payroll of more than \$8 million. In 2001, these  
stores paid Kansas property taxes of more than \$615,000 and  
they remitted sales taxes in excess of \$2.8 million.

Casey's prides itself on its ability to operate efficiently  
its convenience stores and, therefore, sell gas at competitive  
prices to its customers. This efficiency comes from Casey's  
ability to directly purchase gasoline and deliver it to its  
stores through its integrated trucking operation. Casey's  
believes that HB 2330 penalizes its efficiencies.

As a general principle, Casey's believes that free market  
competition should establish motor fuel prices without  
government interference. Retailers and consumer demands  
should establish the price for products and not the  
government. Our economic system works so well because  
competition in the market place establishes prices for  
products based on supply and demand. The remarkable economic  
success of our country over the past four decades is a direct

Commerce Labor  
4-2-03  
Atch #9



result of the openness of our economy, which has permitted competition and entrepreneurship.

For these reasons, Casey's opposes legislation which prohibits below cost selling of motor fuels. Casey's has been confronted with proposed legislation of this type in a number of the other states in which it does business. Due to the complexity and the interaction from the various components of these proposed laws, Casey's has determined that there are often unintended consequences of such legislation that would end up not only harming Casey's and other marketers of motor fuels, but more importantly, would end up injuring consumers through higher gasoline prices.

To avoid these unintended consequences to the greatest extent possible, a "below cost" bill should include a number of specific exceptions that allow certain below cost sales. Those exceptions include meeting the price of a competitor, wherever the competitor may be located. Retailers also should have the ability to have isolated transactions below cost, due to sudden price fluctuations, for a limited period of time, or have other sales exemptions for things such as the final liquidation of a business, bona fide clearance sales, court orders and similar situations. To pass antitrust scrutiny, the legislation should specifically state that any illegal sale of gasoline below cost should have the intent and effect of injuring competition. Also, we believe that it is important to avoid a complicated "cost" definition. Finally, the statute of limitation for lawsuits related to actions arising under a "below cost" bill should be limited to six months.

A review of HB 2330 reveals that it does not satisfy all of these objectives. Although there are certain exemptions from the prohibition against selling below cost set forth in this bill, we believe they are too limiting. For example, in subsection (b)(1) of Section 1, below cost sales can be made for a grand opening and for new or remodeled businesses or special promotions, not to exceed three calendar days per quarter. However, it does not include needed exemptions for such things as a final liquidation of a business, bona fide clearance sales and court ordered sales, and Casey's believes that retailers also should have the ability, for a limited period of time, to have isolated transactions below cost, due to sudden price fluctuations.

Moreover, the good faith exemption of meeting competition is too narrowly drafted in HB 2330. Pursuant to subsection (b)(2) of Section 1, a retailer can meet an equally low retail price only within the same or adjacent municipality. This does not provide any protection for a retailer whose competitor is across the state line or where the major retail center is 20 miles away, for example. It is Casey's position

that a "below cost" bill should allow for the meeting of a price of a competitor, wherever the competitor may be located, not simply within some arbitrarily defined boundaries.

I also would note that HB 2330 goes way beyond the anti-competitive prohibitions of state and federal antitrust laws, as it does not require that the prohibited below cost sale of gasoline would have to be predicated on the intent and effect of injuring competition. Moreover, the bill provides for ultimately a \$5,000.00 civil penalty per violation, which we believe is exceedingly high.

As noted above, one of the protections that a below cost selling bill should contain is a rather short statute of limitation. Casey's suggests that a statute of limitation not exceeding six months is appropriate. This relatively short statute of limitation is very important, because keeping track of the appropriate shipping information for any longer period of time is very difficult.

Finally, during the time of the state's well-publicized budget crunch, this bill would appear to add a lot of responsibilities to the Department of Agriculture and the Attorney General's office. There is no funding mechanism in the bill, so these agencies would be expected to absorb the additional duties imposed by the bill without any additional financial resources.

Thank you for the opportunity to testify on this matter. I will be pleased to respond to any questions members of the Committee may have.

**Testimony Before the  
Commerce & Labor Committee  
On House Bill 2385  
April 2, 2003**

By Roger B. Haack  
President & CEO  
DataTeam Systems, Inc.



Commerce Labor  
4-2-03  
Atch # 10



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## Introduction

Good morning Chairman Dahl and Members of the Committee. My name is Roger Haack. I am the President & CEO of DataTeam Systems of Lawrence, KS. I wish to thank you for the opportunity to address this committee on an issue of great concern to private enterprise throughout this state. My brief comments today are excerpts from a more detailed analysis of this bill which you will find in the handout provided.

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## Background

- DataTeam provides specialized fund accounting, human resources, fixed assets and other business office solutions to school districts in Kansas and other states.
- We believe strongly in our education system and in the appropriate activities of education service centers.
- We also believe strongly in fair competition.

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## House Bill 2385

### Step in Right Direction

- HB2385 is a strong step in the right direction to limit unfair government competition and to promote a level playing field and thus a healthy economy in Kansas. The bill as currently stated however has too many loopholes, but with some changes to the language, it can be a strong and effective instrument.
- The concept of not allowing a governmental agency to convert a for-profit-tax-paying entity into a not-for-profit enterprise constitutes sound economic policy.
- Allowing a governmental agency to provide a good or service if such is not available from the private sector is a necessary exception to make sure needs are met in both urban and rural areas of Kansas. The language in the bill is appropriate *so long as "commercial product or activity" is properly defined*. The definition must not allow a *specific manufacturer's product*, but instead should allow only a broader definition of the basic functionality required. For example, instead of specifying the commercial product as a "1958 Edsel car", the specification should be general transportation, or the governmental agency may try to keep a bad idea alive! Typically only one vendor can provide the specific named product where many companies exist to provide the solution to the broader definition of the requirements.
- The exception that allows a government agency to compete if they can do it at a lower cost also has significant problems. The bill must specify that the costs used in the cost comparison are to be those available to private enterprise. Otherwise, the

governmental agency is able to use their tremendous cost benefits such as steep discounts on materials, no income taxes, no sales taxes and no franchise fees, and the public retirement system, to prove they can do it cheaper! Failure to use *as if* costs ignores the actual total cost of the agency operation to the tax payers of the State.

- When allocating retirement costs, a formula needs to be provided so the true long term cost of KPERS is included in the analysis.
- It is also important that a governmental agency be prohibited from offering non-public services that a private business is locked out of. Example: If private business can not make use of the high speed Internet 2 to deliver an accounting service, then the governmental agency should not be able to use it to deliver that same service.
- Finally, the act should be retroactive or existing unfair competition will continue to undermine the Kansas economy for many years to come. Failing that, the unfair government competitor should not be able to add services or clients to its business so that at least the extent of the on-going damage to the economy is limited.

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## **Conclusion**

Chairman Dahl, Members of the Committee, private small business provides 75% of the new jobs in Kansas. Private business can provide a growing economy and generate additional tax revenues and is the best approach to balancing the budget. The expanded tax revenues allow the state to fulfill its public education and other obligations to the people of Kansas. This goal is best met when government does not compete against private business and competition is on a level playing field. HB2385, with modifications as noted, is a great step in the key concepts of limiting unfair government competition and promoting a strong economy. I encourage you to amend and promote this legislation.

I hope that my comments have provided insight on this issue and that they will help build a stronger economy in this great state.

Thank you.

Are there any questions?

Roger B. Haack  
President & CEO  
DataTeam Systems, Inc.  
4911 Legends Drive  
Lawrence, KS 66049  
785-843-8150  
rhaack@datateam.com





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## Introduction

Chairman Dahl, and Members of the Committee. My name is Roger B. Haack. I am the President & CEO of DataTeam Systems, Inc of Lawrence, KS. I wish to thank you for the opportunity to address this committee on an issue of great concern to private enterprise throughout Kansas. I am in favor of HB2385, but with necessary amendments, as I will explain in a few minutes.

## Vita

- I am a native of Kansas and hold an undergraduate degree in Accounting, a Masters in Business Administration from the University of Kansas, and hold a CPA certificate in this state although I am no longer practicing.
- I have over 20 years of small business ownership in this state on which I base my comments.

## My Company

- DataTeam develops, markets and supports specialized fund accounting, human resources, fixed asset and other software solutions, and Internet based requisitions and web communication services, for school districts and other publicly funded institutions.
- Our primary market is public education in Kansas and surrounding states.
- DataTeam employees 29 persons – of whom 19 are female and 3 are minorities. Our annual payroll is over \$1.3MM including paid benefits and retirement, and we pay nearly \$20,000 in property taxes.
- About two-thirds of DataTeam's revenues are from sales outside of Kansas, thus we are strong contributors to our economy.

## Pro Education

- DataTeam corporately and individually *believes strongly in our education system.*
- My three sons are Lawrence Public Schools graduates, and my wife has worked for 14 years as a Speech Therapist for the district
- DataTeam strongly supports the appropriate activities of education coops. Many cooperatives use our products and services. DataTeam's Vice President of Client Services, Beth Senn, was the clerk for the Northwest Kansas Education Service Center for many years and I was on the Board of that same cooperative. Thus we have a long history and a strong interest in the part they play in the education of Kansas children.

## **ro Competition**

- DataTeam also *believes strongly in fair competition.*
- It is the entrepreneurial spirit and competition that drives small business to provide the best products and services for the lowest possible price. A level playing field, where all of the competitors have the same opportunities, is the only thing that most small businesses ask of the legislature.
- HB2385 is a necessary step in making sure that tax paying businesses are not undermined by unfair government competition, and that private business has a level playing field to compete, hire employees, be successful, pay taxes and stimulate the economy.

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## **Kansas Jobs and Economic Growth**

### **Private enterprise contribution**

- Small businesses have been, and will continue to be, the most important factor in growing and stabilizing the Kansas economy.
- The US government defines a small business as one having fewer than 500 employees. The vast majority of privately employed Kansans, 77%, are employed by small business.<sup>i</sup>
- Job growth is a second factor to consider. A brochure from US Congressman Dennis Moore cites statistics from the US Small Business Administration, that **small businesses provide 75% of all new jobs.**<sup>ii</sup>
- These are private sector jobs provided by entrepreneurs who are seeking to make a living and willing to risk their private capital to create jobs, bolster the economy, and pay taxes.
- To undermine 77% of the workers in Kansas and 75% of the job growth by unfair competition would be to undermine the economy of this state. In our economy today, Legislature needs to do everything possible to shore up and promote our economy and Kansas private enterprise.

### **Growth means different things**

- The desire for government agencies to broaden their services, to generate more revenue, is pervasive throughout every industry.
- Governments' desire to generate more revenue through sales comes from two sources.
  - a. The agency may be under-funded to meet their public responsibilities.
  - b. It's a natural desire to want to grow your "business", whether that be a government entity or a private business.
- When government grows, the burden to balance the budget grows.
- When private entrepreneurs want to grow, it is on their *personal* risk capital, and they contribute to the economy thus helping balance the budget.

- Further, when a private business can't make ends meet, it is forced to refocus the business, the process of manufacturing, selling, supporting, etc. It is forced to become more efficient and to respond to changing market conditions. Thus efficiency and innovation occurs. Competition and the will to survive drive new products and services.
- In contrast, government agencies are very reluctant to reduce a service when it is not paying for itself. Instead they seek additional tax dollars to shore up, or expand, their operations, or they seek to sell products and services to expand their revenue and operations. But governmental agencies have a very strong unfair competitive advantage.

### **Unfair competition**

The following are examples of items paid by private business and not the government agency, or benefits received by the government agency and not the private business, while both are providing the exact same good or service:

- Income taxes: both federal and state
- Franchise taxes
- Sales/use taxes
- Sales/use taxes exemption
- Property taxes
- Retirement contributions. Private enterprise employees are not covered under the Kansas Public Employees Retirement System and thus must make contributions to match the retirement plan for public employees.
- Discounts on hardware: Computer systems and other hardware are generally sold at a discount to a government agency. The purchase of a computer by the private sector at a higher price provides the additional revenue for R&D and allows the vendor to sell the new technology to the government sector at a lower price.
- Discounts on software: These are substantial and frequently in excess of 50% for government entities. As an example, to set up a particular Internet Server you need software licenses called an SQL Server and Windows 2000 Server. For the private sector that fee is \$5,500, but for the educational institution it would only be \$2,441 - a 56% discount enjoyed by the government agency.<sup>iii</sup>
- Liability insurance: Government agencies are protected from large lawsuits by sovereign immunity, and thus they do not need the same level of insurance.
- Ability to share costs with other agencies: In the case of a not-for-profit agency with a spin off for-profit division, there is great opportunity for the not-for-profit to pick up significant portions of the overhead costs, such as allocating only a small portion of the cost for: .
- Risk capital: A huge difference is that private business raises and risks its own capital. A government agency going into business is risking public funds.

## Bottom Line

- While it may seem that an agency is doing a good thing by generating additional revenue to keep costs down or broaden its service, it is actually a drain on the economy as a whole. The perceived savings never materialize when the total cost to the economy is considered.
- To allow unfair competition is to impose a double whammy on taxpayers: requiring them to subsidize the ever-growing number of government “entrepreneurs” from an ever-shrinking tax base.
- Allowing the government to compete with private business for the delivery of private goods puts us on a slippery slope to a chaotic economy.

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## House Bill 2385

### Step in Right Direction

HB2385 is a strong step in the right direction to limit unfair government competition and to promote a healthy economy in Kansas. The bill as currently stated in the attached however, has too many loopholes, but with some changes to the language, it can be a strong and effective instrument. References below are to bill as attached.

- Page 1, Lines 38-42: The concept of not allowing a governmental agency to convert a for-profit-tax-paying entity into a not-for-profit enterprise constitutes sound economic policy. Since they were private competitors before being acquired, this is clear cut government competition.
- Page 2, Lines 1-2: Allowing a governmental agency to provide a good or service if such is not available from the private sector is a necessary exception to make sure needs are met in both urban and rural areas of Kansas. The language in the bill is appropriate *so long as “commercial product or activity” is properly defined*. The definition must not allow a *specific manufacturer’s product*, but instead should allow only a broader definition of the basic functionality required. For example, instead of specifying the commercial product as a “1958 Edsel car”, the specification should be general transportation, or the governmental agency may try to keep a bad idea alive! Typically only one vendor can provide the specific named product where many companies exist to provide the solution to the broader definition of the requirements. The solution is to add a definition that requires this broader definition.
- Page 2, Lines 3-7 are very troublesome. If a government agency can provide the commercial product or activity at a lower cost they are authorized do it. The problems are significant.
  - a. The bill should spell out that the burden of proof is on the government agency to demonstrate this *before* they get into business. This requirement will limit subsequent discussions such “grandfathering” in the operation or such as the investment already made is too large to abandon now.

- b. The bill must specify that the costs used in the cost comparison are to be the costs *as if* it were a private enterprise. Governmental agencies have tremendous cost benefits such as steep discounts on materials, no income taxes, no sales taxes and no franchise fees, and enjoy public retirement instead of private. Example, a private company buys a Microsoft SQL Server license for \$5,000. A governmental agency can buy the same license for under \$2,500. The agency must be required to use the prices available to private concerns and must be able to substantiate. Failure to use *as if* costs makes it very easy for a governmental agency to qualify to compete but this ignores the true cost of the agency operation and the cost to the tax payers of the State. The perceived savings by governmental agencies rarely if ever materialize when all true costs are considered.
- c. The bill requires the governmental agency to allocate direct and indirect costs of operation, but this is a piece of cake to make look attractive. If a private concern needs (e.g.) a computer server, they would have to buy the whole thing and cover the entire cost in their business operation. A government agency could put the lion's share of the cost to some other "legal" activity and allocate just the minor portion actually consumed by the competitive activity or service to that business. This is a huge opportunity and makes qualification to unfairly compete an easy task. Thus limiting language is needed in this area to restrict the opportunity to make it appear that cost savings are being achieved.
- Page 2, Lines 10-12: This section (d) needs to have clarifying language so a governmental agency does not just write in to a bargaining agreement the requirement to use a narrowly defined commercial product or service. An example would be for governmental agency to write into their bargaining unit the requirement to use the XYZ fund accounting system. It is very important that there has to be a valid reason in the bargaining agreement to require a specific product, and not just an easy path to unfair government competition.
  - Page 2, Line 23: When allocating retirement costs, a formula needs to be provided so the true long term cost of KPERS is included in the analysis. The KPERS is currently under funded by some 1 billion dollars. This significant long term cost must be properly allocated to the operation.
  - Page 2, Lines 42-43 and Page 3, Lines 1-2: A governmental agency must be prohibited from offering a service that a private business is locked out of. Example: If private business can not make use of the high speed Internet 2 to deliver a service, then the governmental agency should not be able to use it to deliver that same service.
  - Page 5, Lines 2-5: The governmental agency should have to prove why they should be allowed to get into business in the first place, instead of just responding to complaints. If they are already in business, then they should have to comply with section 2 in order to continue in business.



- Page 5, Line 31-32: The act should be retroactive or existing unfair competition will continue to undermine the Kansas economy for many years to come. Failing that, the unfair business competition should not be able to add services or clients to its business so that at least the extent of the on-going damage is limited.

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## **Conclusion**

Chairman Dahl, Members of the Committee, private business provides 75% of the new jobs in Kansas. Private business can provide a growing economy and generate additional tax revenues and is the best approach to balancing the budget. The expanded tax revenues allow the state to fulfill its public education and other obligations to the people of Kansas. This goal is best met when government doesn't compete against private business and competition is on a level playing field. HB2385, with modifications as noted above, is a great step in the key concepts of limiting unfair government competition and promoting a strong economy. I encourage you to amend and promote this legislation.

I hope that my comments have provided insight on this issue and that they will help build a stronger economy in this great state.

Thank you.

Roger B. Haack  
President & CEO  
DataTeam Systems, Inc.  
4911 Legends Drive  
Lawrence, KS 66049  
785-843-8150  
rhaack@datateam.com

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<sup>i</sup> "Quarterly Employment & Wages, 2001 First Quarter, Kansas." Kansas Labor Market Information. 7 Aug. 2002. <<http://laborstats.hr.state.ks.us/industry/qew011/Kansas.htm>>.

<sup>ii</sup> Office of Congressman Dennis Moore. "Kansas Small Business Resource Conference." Aug. 2002

<sup>iii</sup> "CDWG: Product Overview." 13 Aug. 2002. <<http://www.cdwg.com>>

**HOUSE BILL No. 2385**

By Committee on Commerce and Labor

2-14

AN ACT concerning government; relating to interlocal agreements and private businesses.

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

Section 1. As used in this act, unless the context used clearly shows otherwise:

(a) "Interested party" means:

(1) A private business concern or source that is an actual or prospective offeror for any contract or other form of agreement to perform the required activity and has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the activity from a private business concern;

(2) a representative of any business or professional association that includes within its membership any private business concern referred to in paragraph (1);

(3) an officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity; or

(4) the head of any labor organization referred to in 5 U.S.C. 7103(a)(4) which includes within its membership officers or employees of an organization in paragraph (3).

(b) "Public agency or public entity" means any department or branch of state government and any state agency, authority, institution, city, county, township or other governmental institution or instrumentality.

(c) "Private business concern" means any commercial enterprise in which no governmental entity holds any degree of ownership or contractual control.

(d) "Purchase of a private business concern" means any acquisition of any degree of ownership or control over a private business concern or such business' products, services or property interests.

Sec. 2. No state governmental entity, by interlocal agreement or otherwise shall engage, authorize or enable the purchase of a private business concern to compete against another private business concern. Furthermore, no product, service or property interest produced by means of an interlocal agreement may compete against a private business concern.

However, a public entity may engage in a commercial activity if:

- 1 (a) The commercial product or activity is not available from any for-  
2 profit or nonprofit private business concern;
- 3 (b) if the public entity can provide the goods or services resulting  
4 from such commercial activity to other public entities at a lower total cost  
5 than if goods or services were obtained from a for-profit or nonprofit  
6 business concern, to be determined by using uniform accounting stan-  
7 dards to make the cost comparison;
- 8 (c) use of a for-profit or nonprofit business concern would cause an  
9 unbearable delay or disruption of an essential program; or
- 10 (d) use of the for-profit or nonprofit business concern would impede  
11 the ability of the public entity to fully comply with any collective bargain-  
12 ing agreement.
- 13 Sec. 3. (a) Rules and regulations shall require that an offer from a  
14 public entity to perform a commercial activity reflect all of the direct and  
15 indirect costs that are relevant to the performance of the activity by such  
16 public entity, including, but not limited to, the costs listed in subsection  
17 (b). The regulations also shall provide for the offers of private business  
18 concerns and the offers of public entities to be adjusted, with respect to  
19 costs, as necessary to make the offers comparable.
- 20 (b) The costs referred to in subsection (a) include the following:
- 21 (1) Costs of salaries and benefits for employees, retirees and their  
22 survivors and dependents, including health and life insurance benefits,  
23 pension and retirement benefits and other post-employment benefits  
24 such as severance payments, training and counseling, continued health  
25 care and unemployment and workers compensation.
- 26 (2) Costs of materials and supplies used in the work.
- 27 (3) Costs of office space, equipment, facilities and utilities, including  
28 depreciation expense and property acquisition costs.
- 29 (4) Costs of goods or services received from other public entities that  
30 are used to produce the output, whether or not such goods or services  
31 are reimbursed.
- 32 (5) Cost of general administrative services, general research and tech-  
33 nical support, security, rent, employee health and recreation facilities and  
34 operation and maintenance costs for buildings, equipment and utilities.
- 35 (6) Costs of reorganization and nonrecurring cleanup costs resulting  
36 from facility abandonment.
- 37 (7) Costs relating to bids and proposals and independent research  
38 and development.
- 39 (8) Costs relating to product and performance liability.
- 40 (9) Other relevant costs associated, directly or indirectly, with a public  
41 entity's performance of an activity.
- 42 (c) The rules and regulations shall require that an offer of a public  
43 entity be evaluated on the basis of the same factors, including relevant

1 technical and noncost factors, on which offers of private business con-  
2 cerns are evaluated.

3 Sec. 4. Any person or private enterprise that is adversely affected by  
4 any action of a public entity which is restricted by this act, or by any  
5 inaction of a public entity with respect to a matter that requires action  
6 by a public entity under paragraphs (a), (b), (c) and (d) of section 2, and  
7 amendments thereto, may file a written statement of objections with the  
8 government competition review committee established by section 5, and  
9 amendments thereto. The statement filed with the committee must state  
10 the reasons why the person or private enterprise is adversely affected.

11 Sec. 5. (a) There is hereby created a joint standing committee on  
12 government competition in the private sector composed of the following  
13 members:

14 (1) Two majority party senators, one minority party senator;

15 (2) two majority party representatives, one minority party  
16 representative;

17 (3) the secretary of administration or the secretary's designee;

18 (4) four owners or officers of private business concerns as defined in  
19 section 1, and amendments thereto or members or representatives of  
20 trade associations, one of whom shall be an owner or officer of a private  
21 enterprise having less than \$1,000,000 in gross annual sales in the most  
22 recent calendar or fiscal year or a member or representative of a trade  
23 association that is composed of such enterprises;

24 (5) one member or representative of a labor organization that rep-  
25 resents state employees; and

26 (6) one member or representative of a labor organization that is rec-  
27 ognized as representing employees in the private sector.

28 (b) (1) The speaker of the house and the president of the senate shall  
29 appoint the requisite members from the house of representatives and  
30 senate.

31 (2) The governor shall appoint the committee members as set out in  
32 paragraphs (3), (4) and (5) to serve for two-year terms expiring on De-  
33 cember 31 of each even-numbered year.

34 (c) (1) No member of the committee may serve for more than five  
35 consecutive full terms.

36 (2) Should a vacancy occur, the new member shall be selected or  
37 appointed as the member being replaced.

38 Sec. 6. When the government competition review committee re-  
39 ceives a written statement of objections as provided in section 4, and  
40 amendments thereto, the following steps shall be taken:

41 (a) The committee shall immediately transmit a copy of the statement  
42 to the head of the public entity which is referred to in the statement.

43 (b) The head of the public entity which is referred to in the statement

1 shall respond to the state review committee in writing within 30 days after  
2 receipt of the statement and, if the action concerns a commercial activity,  
3 shall address fully the objections made in the statement and shall indicate  
4 whether remedial action should be taken to correct the situation that gave  
5 rise to the objections.

6 (c) The committee shall hold a public hearing on the statement where  
7 all parties are afforded the opportunity to present information unless re-  
8 medial action agreed to be taken by the public entity is acceptable to the  
9 person or private enterprise submitting the statement to the state review  
10 committee. The hearing shall be held within 30 days after receipt of the  
11 response under subsection (b) unless the committee determines that ad-  
12 ditional time is needed for negotiations between the public entity and the  
13 person submitting the statement.

14 (d) Within 30 days after any public hearing under subsection (c), the  
15 committee shall issue a binding decision with respect to the matter ad-  
16 dressed in the statement and provide a copy to the person submitting the  
17 statement and to the head of the public entity.

18 Sec. 7. Not later than the end of the third quarter of each fiscal year,  
19 the head of each public entity shall submit to the review committee a list  
20 of activities performed by the public entity which are commercial activ-  
21 ities. The entry for an activity on the list shall include the following:

22 (a) The fiscal year for which the activity first appeared on a list pre-  
23 pared under this section;

24 (b) the number of full-time employees (or its equivalent) that are  
25 necessary for the performance of the activity by a public entity;

26 (c) the name of a government employee responsible for the activity  
27 from whom additional information about the activity may be obtained;

28 (d) a description of the activities performed by the public employees;  
29 and

30 (e) an explanation by the public entity as to why public employees  
31 are performing commercial work as it relates to the provisions of this act.

32 Sec. 8. (a) Upon completion of the review and consultation regarding  
33 a list of a public entity, the head of the public entity shall promptly trans-  
34 mit a copy of the list to the legislature and make the list available to the  
35 public.

36 (b) If the list changes after the publication of the list as a result of  
37 the resolution of a challenge under section 10, and amendments thereto,  
38 the head of the public entity shall promptly:

39 (1) Make each such change available to the public and transmit a copy  
40 of the change to the legislature; and

41 (2) make the change available to the public.

42 Sec. 9. Within 30 days after the date on which the list has been trans-  
43 mitted to the legislature and made available to the public under section

1 8, and amendments thereto, the head of the public entity concerned shall  
2 review the activities on the list. Each time that the head of the public  
3 entity identifies an activity that is not excepted under the provisions in  
4 section 2, and amendments thereto, the head of the unit shall undertake  
5 a process to insure that those activities are in compliance with section 2,  
6 and amendments thereto, and that any process to determine who will  
7 perform these activities will be conducted in accordance with the provi-  
8 sions of this act.

9 Sec. 10. An interested party may submit to the review committee a  
10 challenge of an omission of a particular activity from, or an inclusion of  
11 a particular activity on, a list for which a notice of public availability has  
12 been published under section 8, and amendments thereto.

13 Sec. 11. (a) A challenge to a list shall be submitted to the review  
14 committee within 30 days after the publication of the notice of the public  
15 availability of the list.

16 (b) Within 28 days after the review committee receives a challenge,  
17 the committee shall:

- 18 (1) Decide the challenge; and
- 19 (2) transmit to the party submitting the challenge a written notifica-  
20 tion of the decision together with a discussion of the rationale for the  
21 decision and an explanation of the party's right to appeal under subsection  
22 (c).

23 (c) An interested party may appeal an adverse decision of the review  
24 committee within 10 days after receiving a notification of the decision  
25 under subsection (b).

26 (d) Within 10 days after the review committee receives an appeal of  
27 a decision under subsection (c), the head of the review committee shall  
28 decide the appeal and transmit to the party submitting the appeal a writ-  
29 ten notification of the decision together with a discussion of the rationale  
30 for the decision.

31 Sec. 12. This act shall take effect and be in force from and after its  
32 publication in the statute book.

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10-14



## Response to the Proposed H. B. 2385

Chairman Dahl, Committee Members:

Thank you for the opportunity to speak before you today. I am Larry Patrick, Central Region Director for Smoky Hill Education Service Center and this is Lynn Myers, Insurance Director, for South West Plains Regional Service Center. We represent eighty-two (82) school districts in the north central, northwest, and southwest regions of Kansas. We are here to speak in opposition to H. B. 2385.

State statute **72-8230** states that the boards of education of two or more schools districts may enter into an interlocal agreement for the purpose of jointly and cooperatively performing any of the services, functions, activities, and obligations or responsibilities which are authorized by law to be performed by school districts. State legislators had the wisdom to see that districts could save themselves, and their constituents, money by purchasing products and services cooperatively, realizing greater quality and cost efficiency through collaboration. Time and time again this has been the message directed to school districts: work together, purchase together, consolidate services so that money is wisely and best spent.

Currently there are nine education service centers in Kansas formed, as interlocals, through grass roots efforts of school districts seeking ways to access quality services and decreasing their costs for necessary services. Many of the services and products provided by education service centers are essential operational services or products and/or services mandated by law. These services/products include but are not limited to:

Health insurance consortiums  
Assessment scoring/training  
Cooperative purchasing  
Alternative schools  
Career Education

School improvement services  
Staff Development  
Environmental services  
Distance Learning  
Technology/e-rate support

Most of the time services/products are developed and provided at the request of school districts and, all the time, districts constantly monitor prices and quality of services to guarantee that they are receiving the lowest cost and highest quality for their investment. Education service centers exist at the requests of their districts and for the express intent of saving them money. Districts have learned to be smart consumers, and they have to be, in this day of dwindling finances.

**H. B. 2385** promotes small business organizations and education service centers understand the complexity of running a small business. Since we have no taxing authority, we are much like a small business in that we exist through fees for services. We are different in that our only customers are school organizations and it is our mission to save them money while earning enough to keep our doors open. This is sometimes difficult because, while we receive no taxing authority, we are required by law to operate and follow personnel and all regulations mandated for school districts.

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We strongly oppose this bill because it is a step back for our schools and our state. As the bill is written, schools, counties, and interlocals would be constantly inundated with grievances by vendors who want to sell a product or service. Even if it can be proven that the schools are getting a cheaper, better service through an interlocal, the time and effort to meet with an oversight committee would be detrimental to our organizations.

What happens when an insurance vendor decides to low-ball insurance premiums to get a district's business only to raise rates the next year? Suddenly the district no longer has an insurance pool and can no longer afford to provide insurance. Who is going to make sure that those teachers continue to have insurance? This bill is fraught with these kinds of scenarios.

If this committee is disturbed about interlocals owning private businesses, then consider this issue in your bill but don't throw the baby out with the bathwater by adding **any services and products** to this bill. Districts have found ways to save money, meet mandates, access quality services formerly out of their reach through the foresight of our legislators to support interlocal, cooperative ventures. We ask that you not take a step backwards. Do not handicap our districts by making their buying decisions for them.

Thank you for this allowing us to speak. We stand for questions.

Larry Patrick  
Smoky Hill ESC  
Salina, Kansas

Lynn Myers  
SW Plains RSC  
Sublette, Kansas

# Kansas Fire Service Alliance

☞ Kansas State Fire Fighters Association

☞ Kansas State Association of Fire Chiefs

☞ Kansas Professional Fire Chiefs Association

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## Written Testimony to the House Committee on Commerce and Labor Sub SB 181

Presented by Jim Keating  
For the Kansas Fire Service Alliance  
April 2, 2003

The three Associations comprising the Kansas Fire Service Alliance represent nearly 16,000 Kansas firefighters. The Alliance is in strong opposition to legislation that could limit benefits paid to an injured firefighter. The Alliance believes that SB 181 could limit compensation paid to employees who most desperately need the assistance, especially in the occupation as a firefighter.

Much time and money goes toward training and equipment to allow that person to accomplish their task safely. In many cases the employer and employee especially with smaller departments share this expense, in training and equipping.

In this occupation, the number one emphasis is safety. We teach it, we demand it, and great strides have been made towards injury reduction in a dangerous occupation. When we do have someone injured, both the employer and employee should be assured that adequate benefits will be made available to them so they and their families lives can continue without undue interruption.

A means exists to study and debate the issues brought forth in this bill. That avenue should be used to answer the many questions and uncertainties that have arisen through the hearings and debates. Send the measure to Kansas Workers Compensation Advisory Council for review, as that is a primary mission of the Council.

For questions contact:

Jim Keating

785-437-0172

[smkdfd@earthlink.net](mailto:smkdfd@earthlink.net)

Pat Lehman

785-832-9400

[plehman@sunflower.com](mailto:plehman@sunflower.com)

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## Kansas

April 1, 2003

Representative Don Dahl  
Chairman House Commerce and Labor Committee

Good morning Chairman Dahl and Members of the House Commerce and Labor Committee. My name is Ernest Kutzley and I am the Associate State Director of Advocacy for AARP Kansas. AARP Kansas represents the views of our more than 345,000 members in the state of Kansas. Thank you for this opportunity to express our opposition to and comments on Substitute for Senate Bill 181.

More than 33 million men and women age 50 and older are in the labor force, a number that will rise sharply as the workforce grows older and as employers face labor and skills shortages resulting from slowing labor-force growth.

The goal of employers and workers alike should be to minimize the work-related consequences of any chronic health conditions as well as risk of occupational injury on the job.

AARP believes that all workers—regardless of age, gender, minority status, disability or religious and national identity—deserve to be protected from arbitrary discrimination in hiring, terminations, compensation, access to training, promotion opportunities and inclusion in mass layoffs and downsizings.

Age discrimination can be blatant or subtle and can include such practices as refusing to hire or promote older workers, encouraging their retirement, targeting them in reductions in force, curtailing their employee benefits or limiting their training opportunities, job responsibilities and duties.

AARP is committed to expanding employment opportunities and promoting job security for workers of all ages and to removing all barriers to equal employment opportunity. These goals include increasing employment opportunities and providing access to jobs through training, retraining and other programs designed both to encourage older workers to remain in the labor force and to improve the job security of all working Americans. Given the link between employment and retirement income, the well-being of millions of future elderly people depends on their having well-paying jobs.

As 76 million boomers enter middle and old age, the issue is not so much whether older workers could work at least somewhat, and maybe considerably, longer without adverse consequences to themselves or to their employer—they probably could. Rather the challenge will continue to be how to ensure that older workers who cannot work whether temporarily or permanently due to poor health, injury or disability have access to an adequate compensation safety net and suitable workplace accommodations if and when they can return to work.

We believe that Sub. SB 181 jeopardizes financial compensation for injured workers, targets disabled workers for layoffs, eliminates work disability benefits for disabled workers who are laid off while their claim is pending and eliminates work disability benefits for the working disabled who are laid off due to economic conditions.

Therefore, AARP opposes Sub. SB 181. We respectfully ask that you send Sub. SB 181 to the Workers Compensation Advisory Council for review and recommendations.

Thank you.

Ernest Kutzley



Ref . SB 181 Work Comp. Bill 4-2-2003

OPPOSED Joseph Ledbetter MPA Topeka, Ks.

Dear Chair and Committee ,

I am opposed to making it tougher to get medical treatment and or benefits.

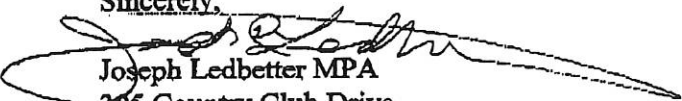
Kansas is already one of the toughest states to get benefits under work comp.

Work comp is extremely profitable for large insurance companies operating in

Kansas at more then 20% profits.

I personally was injured on a job in 1999, and it took 30 months to get treatment and settlement. I was shocked at the callousness of the insurance carrier (Sentry Insurance) of Wisconsin ,and the alleged fraud of their 'Missouri Doctor' who claimed I had no injury while two Kansas Doctors said I had notable injuries. He appeared to say whatever the insurance company wanted for his Judas \$500 fee. The whole process was disgusting to me the consumer .I will add at the time I had no health insurance. Please oppose this money grab by Non-Kansas insurance companies to fleece our worker citizens.

Sincerely,



Joseph Ledbetter MPA  
305 Country Club Drive  
Topeka, Kansas 66611  
Ph. 785-232-6946

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# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

835 SW Topeka Blvd. • Topeka, KS 66612-1671 • 785-357-6321 • Fax: 785-357-4732 • E-mail: [kcci@kansaschamber.org](mailto:kcci@kansaschamber.org) • [www.kansaschamber.org](http://www.kansaschamber.org)

## HB 2330

April 2, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Commerce and Labor Committee  
By Terry Leatherman, Vice President of Legislative Affairs

Chairman Dahl and members of the Committee:

I am Terry Leatherman, Vice President of Legislative Affairs for the Kansas Chamber of Commerce and Industry and also here on behalf of the Kansas Retail Council (KRC) representing over 700 retailers in the state of Kansas. We are here to testify in opposition to HB 2330. The Kansas Chamber and the Kansas Retail Council are dedicated to the promotion of economic growth and job creation within the state and to the protection and support of the private competitive enterprise system.

HB 2330 would create yet another mandate on how Kansans must do business. We believe that the free market is the proper venue for determining the price of gasoline. Government intervention in setting a minimum price for gasoline is intrusive and anti-competitive. Governor George Pataki (R-NY) and former Governor Don Sundquist (R-TN) both vetoed similar legislation in their respective states citing that it would result in higher gasoline prices at the pump for consumers.

Anti-competitive below-cost pricing is already illegal under the federal antitrust laws. The FTC and the Department of Justice's Antitrust Division continue to investigate allegations of predatory conduct. We believe that federal law is adequate and do not need another state level of bureaucracy to govern the cost of gasoline.

The Kansas Chamber and the Kansas Retail Council believe that passage of this legislation

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would lead to higher gasoline prices, encourage inefficient practices and do not protect small independent dealers. We oppose HB 2330 and urge the committee to not act on the bill. Thank you for your time and I will be happy to answer any questions.

**About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

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

# **A Below Cost Selling Law for Kansas**

Prepared for Kansas Attorney General Carla Stovall

## **The Problem:**

The practice of selling of motor fuel "below cost" has but one goal: the elimination of competition. Recognizing that fair pricing in the petroleum marketing industry is essential to maintaining a competitive marketplace and thereby guaranteeing the consuming public adequate supply of product at a competitive price, a number of states have passed legislation to prohibit this practice.

## **The Solution:**

Kansas needs to implement public policy to eliminate this unfair practice.

## **How below cost selling occurs:**

Below cost selling occurs whenever costs associated with marketing motor fuel are recovered from other company operations: for instance, when refiners use profits from refining crude oil to cover inadequate returns from marketing operations; when a marketer with more than one location uses profits from one location to cover losses from below-cost selling at another location; and when a business uses profits from nonmotor fuel sales (i.e. inside sales) to cover losses from below-cost selling of motor fuel.

## **The results of below cost selling:**

A motor fuel marketer competing against another marketer who is selling below cost has but one alternative: meet the competitor's cost or lose marketshare, not only from motor fuel but also from ancillary sales. After a period of time, the net effect is to drive out competition. Once this occurs, the seller engaging in below cost sales can increase his price; he has successfully eliminated the competition. The consumer loses; the free enterprise system is compromised.

## **What is being done to eliminate below cost selling:**

Other states have enacted legislation to prohibit below cost selling, and a number of these state laws have been tested or are currently being tested in the courts. A predatory pricing proposal was last debated by the Kansas legislature in 1991, but the bill's complicated formula for determining "cost of doing business" was a major factor leading to its defeat. It is our understanding that, since that time, several states have established less onerous qualifications for determining cost of doing business.

Although the provisions of the individual below cost selling laws may vary from state to state, all prohibit gas stations from selling gasoline at less than the wholesale price.

Florida has passed one of the most effective below cost laws in the nation. It is suggested as a model for a below cost proposal for Kansas.

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**Requested Action**

On behalf of the membership of the Petroleum Marketers and Convenience Store Association of Kansas and the Kansas consumer, we are requesting that Attorney General Stovall support legislation to prohibit below cost selling when such a proposal comes before the Kansas Legislature.

Executive Committee  
PMCA of Kansas

*PMCA of Kansas under provisions of the U.S. antitrust laws, does not collect, distribute publish or project petroleum product prices. Any information relating to price which the association provides comes strictly and exclusively from published historical reports.*

16-2



# LEGISLATIVE TESTIMONY



*The Unified Voice of Business*

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## HB 2385

April 2, 2003

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the House Committee on Commerce and Labor  
By Terry Leatherman, Vice President – Legislative Affairs

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber supports HB 2385.

In recent years, there have been several legislative issues concerning government/private sector competition.

- A Lawrence business has been challenged by an education cooperative in selling computer software.
- A southeast Kansas aggregate producer has competed with a county road program offering its excess gravel.
- Business concerns have been raised over programs in prisons producing marketable products.
- Computer businesses in university towns competing with school sponsored bookstores selling computers at below market prices.

When government enters into private enterprise activity, they can do so with great advantages over private companies. The taxpayers, not business profits, pay for the government's personnel. The governmental entity is typically exempt from the tax burdens on a private business. The government operation does not even need to be concerned necessarily with making a profit on the enterprise, unlike the private entity.

Several times in recent years, legislation has been proposed to deal with each individual instances. The concept behind HB 2385 is developing a broad public policy to address the idea of government competition with private businesses. A procedure is developed within HB 2385 with two goals in mind.

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- 1) Establish a process a government entity could follow to determine whether it is appropriate to proceed with a program or service that could compete with a private enterprise.
- 2) Develop a grievance process where private business could air concerns and receive resolution when a government activity is competing with their operation.

The Kansas Chamber recognizes and appreciates the challenge of passing legislation in this area. There are many government operations today that are established and popular which could fall under the net of this legislation. However, this is an important public policy question raised in HB 2385. KCCI applauds this Committee for taking up the challenge of reviewing this topic and would urge Committee action to protect small Kansas businesses from facing the unbalanced and unfair competition they much deal with when government enters into the free enterprise system.

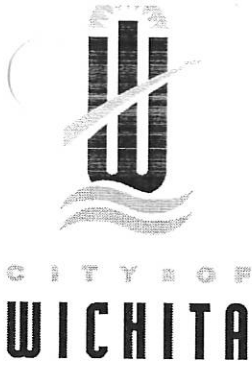
Thank you for the opportunity to comment on HB 2385. I would be happy to answer any questions.

#### **About the Kansas Chamber of Commerce and Industry**

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# TESTIMONY

City of Wichita  
Mike Taylor, Government Relations Director  
455 N Main, Wichita, KS. 67202  
Wichita Phone: 316.268.4351  
Topeka Phone: 316.648.6236  
mtaylor@wichita.gov

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## House Bill 2385 Public vs Private Commercial Activity

Delivered April 2, 2003  
House Commerce and Labor Committee

The City of Wichita opposes House Bill 2385. The premise for the bill seems simple, and perhaps, even reasonable in some situations. But House Bill 2385 raises many difficult questions.

Will this bill hamper creative, innovative economic development initiatives at a time when they are needed the most. For example, the City of Wichita launched the Fair Fares Initiative to tackle the economically devastating problem of high airfares in and out of Wichita. The initiative has lowered airfares at Mid-Continent Airport 70% across the board, has businesses more than \$60-million and has drawn national attention. But it involves economic incentives to two airlines. Could other airlines accuse the City of creating prohibited commercial activity?

The City of Wichita also played a crucial role in luring the Hyatt Hotel to the downtown riverfront. The benefits are indisputable, but again, the project required economic incentives which involve the City actually holding ownership of the hotel. Could a competing hotel file a complaint against the City under the terms of HB 2385?

The bill also challenges traditional public sector functions such as parks and recreation programs. CityArts, a city owned recreation facility, teaches art, jewelry-making, sculpture and ceramics. There are for-profit ceramics studios in Wichita. Could one of them claim the City is creating unfair competition? Wichita has public swimming pools which charge a fee. Could one of the private for-profit swimming pools in town accuse the City of engaging in unlawful commercial activity? There are many other examples from after-school programs to sports leagues.

These are just a few of the questions which come to mind. The ramifications of HB 2385 could be so far-reaching even supporters of the bill can't predict them. And of course the obvious argument against HB 2385 is that it creates a complicated, expensive layer of new government bureaucracy and red tape.

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# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Memorandum

Date: April 2, 2003

To: House Committee on Commerce and Labor

From: Roger Werholtz  
Secretary of Corrections

Re: HB 2385

HB 2385 prohibits state governmental entities from engaging, authorizing or enabling the purchase of a private business concern in order to compete with another private business concern. Additionally, HB 2385 restricts state entities from providing products, services, or property interests pursuant to an interlocal agreement that may compete with a private business concern. The exceptions to the prohibition against interlocal agreements involve situations where the goods or services are not available from a private business concern, the public entity can provide the goods or services at a lower total cost than if obtained from a private business concern as determined by uniform accounting standards, procurement of the goods, or services from a private concern would cause an unbearable delay or disruption of an essential program, or use of a private business concern would impede the ability of the public entity to comply with any collective bargaining agreement. The accounting procedure established by HB 2385 requires the cost of the service as would be provided by the Department to be increased for comparison purposes to reflect all direct and indirect costs including administrative overhead, security, and labor that is free.

The Department of Corrections is opposed to the provisions of HB 2385 since those provisions would apply to the Department's industry programs, inmate work details, and food service operation to the detriment of the budgets of the State and other governmental entities. The Department of Corrections has entered into a number of agreements with other governmental entities, non profit organizations, business concerns, and vendors which utilize the unique opportunities available to the Department of Corrections to provide goods and services to other governmental entities, non profit organizations, and itself that otherwise would be unavailable or would be provided at a substantially higher cost pursuant to HB 2385.

900 SW Jackson - 4<sup>th</sup> Floor, Topeka, KS 66612-1284

Voice 785-296-3310 Fax 785-296-0014 <http://www.dc.state.ks.us/>

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HB 2385 artificially increases the cost accounting for goods and services provided by the Department of Correction and subjects those artificially inflated costs to in effect be passed on to other governmental entities and non profit organizations to the detriment of taxpayers and non profit organizations. The management of confined offenders by the Department of Corrections has two distinct characteristics relevant to HB 2385. First, the Department strives to provide offenders with work experiences, training, and a work ethic as part of their rehabilitation and to reduce inmate idleness. Secondly, due to the exemption from requirements to pay minimum wages, offenders can provide labor for the benefit of governmental and non profit entities at a substantial savings. HB 2385, by requiring that the "costs of goods or services received from other public entities that are used to produce the output, whether or not such goods or services are reimbursed" be artificially included in a cost comparison between the Department and a private business, significantly impedes the Department's ability to engage offenders in work activities and other entities from benefiting from inmate labor on projects that otherwise would not be possible.

During FY 2002 offender work crews comprised of minimum custody inmates from correctional facilities and offenders under post release supervision at Day Reporting Centers provided over 893,900 hours of labor to other state agencies, school districts, cities, counties, and nonprofit organizations. Those services, if paid for at the minimum wage rate, would have cost other government entities and nonprofit organizations in excess of \$4,603,900. HB 2385 would require this savings to be included in a cost comparison and local units of government and non profit organizations would be prohibited from utilizing inmate work details if any business offered to provide those services for any lesser amount than the savings provided through use of inmate work details. HB 2385 would require an extensive cost accounting and comparison for each of those projects. HB 2385 has the effect of preventing governmental entities from receiving free labor to perform services that the government could not otherwise afford.

In addition to a pool of labor available to perform public service, the Department also has some equipment that, while necessary for the operation of its facilities can also be used for the benefit of other state entities and the taxpayers. The Topeka Correctional Facility must have laundry facilities for the washing of clothes and linen. Of course, that facility also has inmates available to work in the facility's laundry for incentive pay substantially lower than minimum wage rates. That combination is tailor made to provide laundry services to other state entities such as Juvenile Justice facilities, the Kansas Neurological Institute and Emporia State University at a substantial savings to the state. The Winfield Correctional Facility, likewise, provides laundry services to the Veterans Home.

The Department of Corrections also provides inmate labor to build picnic tables and birdfeeders for the Department of Wildlife and Parks. Additionally, inmate crews on behalf of the Department of Wildlife and Parks and the Department of Transportation do maintenance work and pick up trash at state parks and along highways. Kansas Correctional Industries also produces paint, highway signs, furniture and clothing for use by the Department and other governmental entities.



HB 2385 would require the actual cost incurred by the state to be artificially inflated as part of a cost comparison calculus. The result derived from HB 2385 is that, though such services could be provided at a substantial savings to the state and other governmental entities, the Department could be precluded from providing those services and the other governmental entities would be required to pay for those services from private entities at a substantially higher cost.

Finally, the cost of incarcerating persons for the public's safety is not insubstantial. The Department of Corrections attempts to lessen that burden on the citizens of the state by utilizing inmate labor to perform services both for the Department and other governmental entities. HB 2385 would preclude the use of inmate work details in facility operations, public service, and the Department's industries programs by artificially increasing the cost of those services to the state and other governmental entities. In addition to artificially increasing the cost of such services to other governmental entities by the difference between the minimum wage rate and the incentive pay paid by the Department, HB 2385 would also require the costs of security and other costs associated with the administration of a correctional facility to be included in the cost comparison provided for by HB 2385 even though those costs would be incurred by the state irrespective of whether inmate work details were made available. The Department believes that use of inmate work details for the provision of goods and services is a resource that should be enhanced in order to achieve greater savings to governmental entities rather than subjecting governmental entities to greater costs through the provisions of HB 2385.



Testimony on  
**HB 2385 – Interlocal Agreements and Private Business**  
Before the  
**House Committee on Commerce and Labor**

By  
Mark Tallman, Assistant Executive Director/Advocacy

April 2, 2003

Mr. Chairman, Members of the Committee:

Thank you for the opportunity to comment today on HB 2385. It appears this bill is designed to address a perceived problem regarding public competition with private business. KASB believes that concerns about this competition should be addressed at the level where the perceived competition occurs. School districts are constantly being asked to find ways to operate more effectively and to work more cooperatively. Yet this bill could punish school districts for doing just that. Let me review some of our concerns.

The first section of the bill contains definitions, but it does not define perhaps the most important term in the bill “commercial activity.” If commercial activity is defined as any activity that the private sector could provide then it would include virtually anything schools do. Instruction can be provided by private schools. Organizations such as Sylvan Learning Center can provide supplemental services such as tutoring. School meals “compete” with restaurants and convenience stores. Some districts operate their own bus service and others contract with providers. School district business operations, custodial, landscaping and maintenance services could all be offered by private providers. Sports and other activities are conducted by other organizations. School districts may legally conduct all of these activities, and interlocal agreements have been formed under state law to help school districts (and other public entities) carry out these responsibilities.

In the second section, the first sentence prohibits any “state governmental entity” from purchasing a private business concern to compete against another private business concern. It is unclear to us whether the term “state governmental entity” applies only to the state, or also to its subdivisions such as school districts. The second sentence prohibits “an interlocal agreement” from competing against a private business concern. However, it does not define what “competing” means. As noted above, virtually anything an interlocal agreement does for school districts could be viewed as potential competition with private business concerns. The third sentence says a “public entity” may engage in “commercial activity” under certain conditions. This single section refers to three presumably different public entities, each with different limitations or conditions regarding interaction with the private sector.

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There are four “exceptions” provided for allowing “public entities” to “engage in commercial activity.” Because commercial activity is not defined, school boards would not know what activities would fall under one of those exceptions. Presumably, anything schools do that could possibly be done by a business entity would have to come under one of those exceptions. This means any activity could, at any time, be challenged under the other provisions of the bill.

The third section refers to requirements of “rules and regulations” but does not indicate what entity is required to adopt those rules and regulations. It says that if a public entity makes an “offer to perform a commercial activity” it must include a long list of costs that must be compared to the costs of private sector offers. Does this section only apply to instances when public entities offer to provide goods or services to other public entities, or when school districts offer services to their students and patrons? In any case, we believe this requirement would add to the “administrative costs” of school operations.

School districts also provide services to private schools, such as meal service and transportation. School districts are allowed by state law to provide childcare and preschool services to students, staff and community members. They are allowed, for a fee, to offer the community the use of district buildings, grounds and buses. Do these activities fall into the definition of commercial activity? If not, what activities are “commercial?”

Section four allows any person or private enterprise to bring a complaint or objection against “any action of a public entity which is restricted by this act.” Because of the lack of a definition, we have no idea what actions are, in fact, restricted by this act.

Section five creates a “joint standing committee on government competition in the private sector.” We presume this is the “review committee” referred to in the following sections. In section six, that committee is charged with resolving conflicts by holding a public hearing and issuing a binding decision. Yet that committee does not include any representatives from the public sector, such as representatives of school districts. If such a committee is created, we believe it must include school board representation.

Section seven requires that the head of every public entity submit a list of commercial activities to the review committee. Again, the bill offers no guidance as to what activities fall under that category. It would potentially be a massive bookkeeping task for school administrators to develop and update such a list. Section eight also requires this list be transmitted to the Legislature and to the public, even though such a list is already required to be submitted to the review committee, which is a joint committee with legislative representation. Section nine requires the constant updating of this list.

Sections ten and eleven allow “interested parties” to challenge the list, with the challenge resolved by the review committee. Both the challenger and the public entity are allowed to appeal the committee’s decision, but the head of the review committee handles the appeal, the same body that rendered the first decision. In fact, the bill does not seem to indicate how the “head of the review committee” is even selected.

From this overview of the bill, we believe it would create far more problems and confusion than it would solve. Many, if not most, school board members (and other local officials) are themselves involved in private business concerns. They are quite capable of balancing public and private interests without state oversight.

We urge you to reject HB 2385. Thank you for your consideration.



 Highfill Scott  
Executive Director  
bscott@usa-ks.org

M. Katharine Weickert  
Director of  
Administrator Services  
kweickert@usa-ks.org

Don Knowles  
Professional Development  
Coordinator  
knowlesfarms@umacs.net



Kansas Association of  
Elementary  
School Principals  
(KAESP)

Kansas Association of  
Middle School  
Administrators  
(KAMSA)

Kansas Association of  
School Administrators  
(KASA)

Kansas Association of  
School Business  
Officials  
(KASBO)

Kansas Association for  
Supervision and  
Curriculum Development  
(KASCD)

Kansas Association of  
Special Education  
Administrators  
(KASEA)

Kansas Association of  
Secondary School  
Principals  
(KASSP)

Kansas Council of  
Career and Technical  
Education Administrators  
(KCCTEA)

Kansas School  
Public Relations  
Association  
(KanSPRA)

**HB 2385: Government Relating to Interlocal Agreements and  
Private Business**  
Testimony presented before the House Committee on Commerce and Labor  
by  
**Dr. Kent Hurn, Assistant Lobbyist  
United School Administrators of Kansas**

April 2, 2003

**Mister Chair and  
Members of the House Commerce and Labor Committee**

I am Kent Hurn, assistant lobbyist for the United School Administrators of Kansas. I represent USA in reviewing HB 2385.

HB 2385 would prohibit public agencies, including state and local government agencies, from engaging in any commercial activities to compete with private business. There are a few exceptions but few are noteworthy.

Interlocal agreements over the past 25 years have ranged from cooperative purchasing to in-service for professional staff to providing drop-out recovery programs and much more. School boards have looked for years for means to improve services and cut costs that will serve their students and patrons. These agreements have saved school districts thousands of dollars and have greatly improved the choices for selection that target specific needs.

How many times have we been told that school districts need to be more like businesses? We have been told to become more effective and more efficient. We have been more effective and efficient for over 20 years due in part to cooperative agreements. Now legislators appear to be asking us to step back and become less efficient. I am confident that our patrons would not accept this concept very well.

Section 2 of the proposed bill causes concerns that it would tie the hands of a governmental unit and deny flexibility. Section 2 is financially shaky and unresponsive to customer service. A legal threat appears eminent.

USA urges this committee to continue the opportunity for school districts to purchase "pointed" needs and to do so at the best price available.

Thank you Mr. Chair. I will stand for questions.

KANSAS

**Statement By**  
**Hal Hudson, State Director**  
**National Federation of Independent Business**  
**Presented to the**  
**House Commerce and Labor Committee**  
**On House Bill 2385**  
**Wednesday, April 2, 2003**

Mr. Chairman and Members of the Committee:

On behalf of the 6,000 members of NFIB/Kansas, I was one of the proponents of legislation to limit or prohibit government competition with private business.

The question that prompts such legislation is: "Which activities are best achieved by government, and which are best achieved when performed by private business?"

It is a proper function of government to obtain necessary goods and services at the least cost to taxpayers. However, the least cost may not always be the lowest purchase price.

When a government agency or department provides services that displace those of a taxpaying employer of the state, income taxes of the business and jobs may be lost, with the additional loss of taxes that would have been paid by those employees.

While I wholeheartedly endorse the objective of reducing government competition, I am not sure that H.B. 2385, as written, does that. It appears to be lengthy with many "provisos" that make it difficult for a small business to demonstrate it can, in fact, provide its goods or services for less.

Additionally, the regulatory hurdles provided in H.B. 2385 are so complex as to cause many small businesses to forego any attempt to gain government business.

To make the fixes that would make H.B. 2385 a better bill, which I am not prepared to offer to you today, probably would take much more time than has been allotted for discussion.

Therefore, I would request that you take no action on H.B. 2385 today, and that you hold it over until next year, when time might be available for full discussion.

Thank you for your consideration of this request.

Hal Hudson, State Director





League of Kansas Municipalities

300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

**To:** The House Commerce and Labor Committee  
**From:** Don Moler, Executive Director  
**Re:** Opposition to HB 2385  
**Date:** April 2, 2003

First I would like to thank the Committee for allowing the League to testify today in opposition to HB 2385. HB 2385 is a bill which seeks to address an issue which we do not believe is a significant problem in Kansas. It appears to deal exclusively with interlocal agreements and the governmental purchase of a private business concern to compete against another business concern. However, the language in Section 2 appears to be so broad that we believe it encompasses any activity of government in Kansas which could possibly be characterized as "competing" against private business. As a result, the ramifications of this piece of legislation could be very serious and far reaching.

To the best of our knowledge, the only issue of this type which has been raised over the past two sessions, including an interim study, arose from a single instance concerning school district software. It was purchased by a group of school districts from a company which was going out of business, and was then resold to other school districts as a way for the first group of school districts to make a little money, and the second group of school districts to save a little money. We find it very interesting that while government, particularly local government, is always being urged to save the taxpayer's dollar, when a city, county, or school district finds a way to save the taxpayer's dollar, that inevitably a private business interest appears complaining that they are unable to compete against the governmental entity or that their public subsidy would be taken away. It makes it very difficult to save taxpayer dollars when you must always purchase from private entities who are making a profit on every sale.

I have listed on the attached sheet a number of services provided by governments in Kansas which could be considered to be "competing" with private enterprise. This is by no means an exhaustive list. Any or all of these areas could run afoul of this legislation if it successfully makes it way through the legislative process. Are the proponents of this legislation urging that private enterprise be allowed to take over all of these functions which are now performed by government throughout the State of Kansas?

Finally we would like to comment on the "joint standing committee on government competition" which is contemplated in section 5 of HB 2385. We would suggest that if this legislation moves forward, that there should be a significant number of local government officials who are members of this joint standing committee. This would ensure that enforcement of these rules would not be a one-way street directed exclusively at local government. Given the magnitude of the overlap between public and private services, as demonstrated by the attached, we suspect that this Committee would be very busy and require at least one or two FTEs to staff the Committee.



With that said, the League stands in strong opposition to all aspects of HB 2385, and we would urge this Committee to vote it down. I will be happy to answer any questions the Committee may have concerning the League's position on this legislation.

Road Maintenance and Construction (including engineering)  
Swimming pools (municipal v. private)  
School Busing (both for recreation programs and for schools)  
School district/university food services  
Public transportation  
Doing "in house" training (State, University, City, County, etc.)  
Ambulance Service (EMS)  
State Motor Pool  
Information Network of Kansas (INK)  
Health care (County hospitals and/or public health agencies)  
Trash Hauling/Recycling/Landfill operation  
Recreational programming (competes with private clubs, YMCAs and YWCAs)  
Recreational facilities  
Golf Courses  
Water utilities  
Electric utilities  
Gas utilities  
Corrections (both adult correctional facilities and juvenile facilities)  
SRS services  
Education in and of itself (competes with private schools)  
Home Loans (Mortgage Revenue Bond programs)  
Colleges and Universities (state v. private)  
Museums (state or local v. private)  
PMIB (versus state chartered banks)  
Tree care  
Licensure of technical professions  
Cemeteries  
Economic development  
Public Housing  
Alcohol and Drug Treatment Programs  
Cable Television  
Office Furniture (Kansas Correctional Industries)  
Gas Station (Wetmore) – Could preclude smaller communities from running the local grocery store or pharmacy as well.  
Printing (State prints statutes, Kansas Reports etc.)  
Public Parking Garages  
Eradication of Noxious Weeds (Competes with COOPs and private agriculture applicators, as well as landscape companies)

Committee on Commerce and Labor  
April 2, 2003

Honorable Members of the Committee

Thank you for the opportunity to address the subject of interlocal services and House Bill No. 2385. This bill potentially impacts every Kansas governmental entity and, therefore, it is important that the Committee give serious consideration before moving this bill forward.

Interlocals provide school services that are of high quality and less expensive than obtained elsewhere. The cooperative effort results in efficient, low cost governmental services, which level the playing field for districts of all sizes and wealth. With no tax levy and all services voluntary, interlocals provide a cost efficient clearinghouse that helps local governments stretch tight revenues.

The Southeast Kansas Education Service Center was established in 1976 as an interlocal cooperative agreement. As an interlocal we perform any of the services, duties, functions, activities, obligations, or responsibilities that are authorized or required by law. Interlocals have no power to levy taxes; therefore our revenue comes from contracted services delivered upon request by those we serve.

Schools are the driving force behind our services. School district administrators and professionals meet regularly in advisory committees to plan services deemed necessary and evaluate those currently in place. Interlocals have an automatic sunset law. If districts discontinue a service, it does not take long for that program to cease to exist. In other words, the only programs and services being delivered are those which districts wish to purchase.

It is not unusual for a district to participate in services from multiple interlocals, as many cooperatives have a unique program that serves a school's need. For example: a staff development activity, distance learning opportunity, and special education are programs that many districts find an advantage in working collaboratively, but may not find available from a single interlocal. Special education interlocals regularly share human resources in hard to staff areas like deaf education, vision impaired, and severe behavior disordered programs.

There has been some discussion concerning fund accounting and payroll source codes that the Greenbush consortium obtained from an entity that no longer wished to be in the business of providing this service to school districts. The source codes were developed in the 1960's, and like 70 or so other school districts we have been using the program for almost 30 years. We obtained the source codes only after we determined that there were

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few options to provide the quality of accounting services needed, and we needed to act responsibly to protect our own interests and be able to control our future costs.

The suggestion that government is in competition with private business could be leveled at any function a school provides to itself rather than hiring a private business. For example, are we forced to contract our lunch program, our transportation services, and our custodial services? What about substitute teachers, curriculum development, staff development and training or any other service we are providing to ourselves? Why not just call in Edison, Inc and turn over all Kansas schools to a private contractor?

HB 2385 is flawed in many areas. First, since there is no legislative finding at the beginning of the statute, we do not even know what the perceived problem is. The statute has an ill defined, overly broad scope of application, and even if you accept the argument that there is a problem of competition in the market place from governmental units, this statute fails to limit its scope of application to the alleged problem.

In Section 2 the statute is so poorly conceived that it would tie the hands of a governmental unit and deny the flexibility to make decisions to eliminate a private source that might be inexperienced, financially shaky, or unresponsive in customer service. We could only proceed in the face of a legal threat.

Section 3 is a twilight zone of incomplete and disembodied regulatory framework that would be cumbersome and completely unworkable. Who knows, for example, what it means to require that: "the rules and regulations shall require that an offer of a public entity be evaluated on the basis of the same factors, including relevant technical and noncost factors on which offers of private business concerns are evaluated". It is possible that some private sector offers would even be unwilling or unable to comply with this cumbersome and ill-conceived process. This statute might have the unintended result of driving private business concerns from the market to provide goods and services to public entities.

The Joint Standing Committee on Governmental Competition presents probable constitutional issues in regard to separation of powers. The quasi-legislative, quasi-judicial entity described in Sections 4, 5, and 6 would simply create more legal battles.

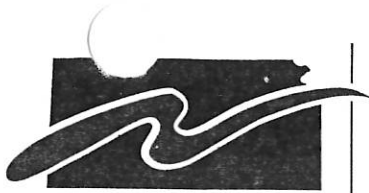
The Black Hole of Section 7 is an apparent effort to ensure governmental jobs for all the accounting and public administration graduates of all the Kansas colleges and Community Colleges. It creates a gargantuan obligation for each "public entity", which, by the way is an undefined term, to provide lists of all its "commercial activities", again an undefined term. As if working with an undefined concept isn't burden enough, each public entity must include in its list the number of full time and FTE employees involved in each activity, and an explanation of why the government is involved in this activity.

I do not believe a bill could be constructed to be more of a roadblock for economical government. This new governmental information gathering, quasi-legislative, quasi-judicial apparatus contains a vast, cumbersome, and intrusive impediment to efficient and

economical government. The perceived problem at which HB 2385 is aimed is not clearly identified and diagnosed and the prescribed medicine is likely to make governmental entities very, very sick.

I believe the legislature should be encouraging units of government to more closely work together, share services, and programs which meet the needs of our citizens and protect scarce resources. The interlocal statutes allow this cooperative structure and they should be promoted and encouraged.

David DeMoss  
Executive Director  
Southeast Kansas Education Service Center



**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

WRITTEN TESTIMONY

Before the House Commerce and Labor Committee

HB 2385

April 2, 2003

By Judy A. Moler, General Counsel/Legislative Services Director

The Kansas Association of Counties feels very strongly about the bill before you, **HB 2385**. The Kansas Association of Counties opposes the bill as it could cause serious damage to the working relationships counties have with other counties, cities, townships, etc. through interlocal cooperation agreements.

Part of the charge to local governments is to do more with less. Counties are sometimes able to seize the opportunity to do so by cooperation with other local governments or by providing services more inexpensively and efficiently through the use of interlocal cooperation agreements. This bill offers a broad brush solution to a problem found in one locality. To pass a bill of this breadth at the last hour of the session would do a disservice to local governments across the state. There were interim studies on this issue with **NO** recommendation for introduction of this bill. The establishment of a commission to second guess local government is offensive. Local officials are elected also by the same citizens who elect state officials. The Kansas Association of Counties urges you to defeat this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

6206 SW 9th Terrace  
Topeka, KS 66615  
785•272•2585  
Fax 785•272•3585  
email kac@ink.org

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# KANSAS

JUVENILE JUSTICE AUTHORITY  
DENISE L. EVERHART, COMMISSIONER

KATHLEEN SEBELIUS, GOVERNOR

## HOUSE COMMERCE AND LABOR COMMITTEE APRIL 2, 2003

### HOUSE BILL 2385

The Juvenile Justice Authority stands primarily neutral on House Bill 2385. However, the agency does have concern about the effect lines 41 and 42 may have on current work-study programs in two of our correctional facilities.

For example, the Topeka facility has five work-study programs that could be negatively impacted. These include the following programs:

1. Production of pillows and blankets for the airline industry
2. Production of sheep blankets for the sheep industry
3. Production of highway vests for KDOT
4. Logo embroidery for Shawnee County
5. Greenhouse that produces tomatoes supplied to local grocers.

The Larned facility has a program that produces crafts that are placed on consignment in several outlets. They also assemble spools for a wire manufacturer.

These programs are an essential component in the agency's effort to prepare offenders for their eventual return to their communities. In addition, these programs provide the opportunity for offenders to pay restitution to their victims as well as pay a portion of their room and board.

Finally, the offenders who participate in these programs have completed their high school or GED requirements. Without work-study programs these individuals will likely become idle and potentially problematic resulting in costly extended lengths of stay .

I clearly agree with the need for placing limitations on such state governmental activity, but I strongly recommend that programs as I have mentioned be protected from this bill.

Thank you for your consideration of our position.

Denise Everhart  
Commissioner