

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Stephen Morris at 11:55 a.m. on April 29, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Kerr- excused
Senator Larry Salmans- excused

Committee staff present:

J. G. Scott, Chief Fiscal Analyst, Kansas Legislative Research Department
Leah Robinson, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Judy Bromich, Administrative Analyst
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Mary Ellen Conlee, Coalition for Opportunity
Dr. Kent Hurn, Assistant Lobbyist, United School Administrators of Kansas
Diane Gjerstad, Wichita Public Schools

Others attending:

See Attached List.

Chairman Morris opened the public hearing on:

HB 2688--Kansas use law procedures, establishing the state use law committee

Staff briefed the committee on the bill. The Chairman welcomed the following conferees who testified on the bill:

Mary Ellen Conlee, representing Coalition for Opportunity, a group of Kansas manufacturers employing more than 400 people who are blind and disabled, testified in support of **HB 2688 (Attachment 1)**. Ms. Conlee addressed concerns about the state use law program and eligibility concerns with current law. She distributed copies of the State of Kansas 2004 Products and Services (copy is on file with the Kansas Legislative Research Department).

Dr. Kent Hurn, Assistant Lobbyist, United School Administrators of Kansas, testified in opposition to **HB 2688 (Attachment 2)**. Dr. Hurn asked that the Senate Ways and Means committee exempt school districts from the waiver process. He felt the agency should be allowed to bid as any other qualified vendor. Dr. Hurn also explained that they believe the local board of education is in the best position to determine the specifications for goods and services and the low cost bidder for the goods and services.

Diane Gjerstad, Wichita Public Schools, testified in opposition to **HB 2688 (Attachment 3)**. Ms. Gjerstad explained that the district's purchasing director is very concerned with the bill and how a new layer of bureaucracy and paperwork for schools to buy goods and now services would impact their mission to meet the needs of 100 schools in a timely and cost effective manner. She suggested that the vendors, state agencies (basically the Kansas Department of Administration) and the school districts meet during the Fall and report back during the 2005 Session.

There being no further conferees to come before the committee, the Chairman closed the public hearing on **HB 2688**.

The Chairman directed that the Kansas Department of Administration meet with all interested parties regarding **HB 2688** during the interim to discuss the issues contained in the bill and report back to the 2005 Legislature.

CONTINUATION SHEET

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE at 11:55 a.m. on April 29, 2004, in Room 123-S of the Capitol.

Senator Jordan moved, with a second by Senator Helgerson, that a letter be sent from the Chairman of the Senate Ways and Means Committee to the Secretary of the Kansas Department of Administration regarding the study on **HB 2688**. Motion carried on a voice vote.

The meeting adjourned at 12:35 p.m. The next meeting is scheduled for May 5, 2004.

SENATE WAYS AND MEANS COMMITTEE
GUEST LIST

DATE April 29, 2004

| NAME | REPRESENTING |
|----------------|-------------------------|
| Diane Gjerstad | Wichita Public Schools |
| Pat Terrill | Cerebral Palsy Research |
| Garon Dumlak | DOB |
| Julie Thomas | DOB |
| Bill Brady | KGC |
| Gavin Durn | DFA |
| Phil My | AFIN Linn Firm |
| Tom Bruno | EDS |
| Cheryl Collins | KMS |
| Kent Huhn | USA |
| Jim Edwards | KMSB |
| Tom Fulewicz | CKKS |
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Coalition for Opportunity

**Testimony presented by Mary Ellen Conlee
On behalf of the Coalition for Opportunity
Regarding HB ~~2866~~ 2688**

April 29, 2004

Senator Morris, Members of the Senate Ways and Means Committee:

I am Mary Ellen Conlee, representing a group of Kansas manufacturers employing more than 400 people who are blind and disabled. Five of the eight companies that are qualified to participate in the Kansas Use Law Program have joined together to form the Coalition for Opportunity to try to address concerns about the state use law program. The members are Envision, KETCH and Center Industries Corporation from Wichita, TECH from Hutchinson and Cartridge King of Kansas from McPherson.

It has long been public policy in Kansas and most other states to have state government agencies, universities and school districts purchase the products manufactured by blind and disabled citizens. The Kansas Use Law can be found at K.S.A. 75-3317-22. The intent of the use law is to help provide employment for Kansans who are blind or severely disabled. It is the expectation that the products offered for sale will meet quality and delivery standards and be competitively priced.

In Kansas eligible manufactured products are available for review in a catalog printed annually, listing all product details and prices. The Kansas Director of Purchasing establishes fair market prices.

Both the vendors, who we represent, and the purchasing agents for state agencies and school districts have expressed frustration with the details of how the program works. For some time, this law has needed updating to better deal with current purchasing realities. The Coalition for Opportunity requested HB 2688 in order to update the Kansas Use Law and create a mechanism for addressing the conflicts between qualified vendors and purchasing agents.

From the vendors prospective, key problems experienced over time have included:

- Out of date language for qualifying as an eligible participant
- A clear definition of fair market price
- Concerns about competing with office supply cooperatives such as Boise Cascade and Corporate Express
- A lack of a defined process for establishing how new products can be included in catalogue
- No defined process for ongoing communication regarding conflicts

Senate Ways and Means
4-29-04
Attachment 1

Eligibility concerns with current law:

Currently K.S.A. 75-3317 (d) states that to participate in the State Use Law program, an entity must be a “sheltered workshop.” “Sheltered workshops” are those that are eligible to pay less than minimum wage. The coalition organizations believe strongly that paying less than minimum wage is an antiquated and inappropriate criterion. To qualify companies that did not meet the sheltered workshop definition, the statute also names specific institutions, one of which no longer exists.

Proposed eligibility changes simply reflect the policy intended by the original State Use Law. In order to become a “qualified vendor”, HB 2688 would require companies to

- 1) Be not-for-profit
- 2) Primarily employ the blind or disabled
- 3) Operated in the interest and for the benefit of the blind and disabled
- 4) Have their primary purpose to provide employment for the blind and disabled

When testimony was presented to the House Government Budget Committee, committee members expressed concern that the State Use Law Committee, as proposed in the original version of the bill, took too much power from the State Purchasing Department. School boards, Regents institutions and the Department of Administration expressed concerns about the authority of the proposed State Use Law Committee. In addition, they expressed concerns about how the current law is applied. The House Government Budget Committee directed that all of the parties to this issue meet and come back with an agreed to bill.

The amended bill that is before you is the product of that process. Changes in Kansas Use Law agreed upon by the vendors, Regents representatives, the Department of Administration and a representative from the United School Administrators are as follows: These comments use HB 2688, as introduced, as basis, unless otherwise noted.

- Criteria for eligibility - same as in original HB 2688. (“Qualified Vendors”)
- Remove “offered for sale” language in current law, which allowed qualified vendors to repackage new product and resell it under the protection of the state use law.
- Mechanism for certifying products and pricing remains with the Director of Purchasing.
- Shorten definition of “Unified School District” so as not to include PTAs etc., but clarify purchasing coops are part of the law.
- Products and services approved after the publication of the catalog may be eligible for the State Use Law, but it is the responsibility of the vendor producing the product or service to notify the state agency and USDs regarding the new product.

- It is the responsibility of the vendors to distribute the catalog.
- Language in the original bill that brought foundations and affiliated organizations under the law was eliminated.
- Waivers can be granted when it is shown that the qualified vendor can't furnish the product or service and that it is available from another commercial provider
- Waivers can be granted directly by the Vendor. If the vendor does not grant the waiver, agencies can appeal to the Director of Purchasing. If vendors do not agree with the decision of the Director Of Purchasing, they can appeal to the new "State Use Law Committee" ('SULC')
- The SULC shall be comprised of six members:
 - Member to be appointed by the Director of Purchasing
 - Member to be appointed by the Regents/Universities
 - Member to be appointed by the USDs
 - Three members to be appointed by the Governor. Two of whom are knowledgeable of the training and employment needs of the blind and disabled and one who is a qualified vendor.
- SULC responsibilities
 - Deal with agency and USD non-compliance. Recommendations and findings forwarded to the Secretary of Administration for enforcement
 - Deal with waiver disputes
 - Review the State Use Law Program and issue a report addressing the following issues:
 - Review pricing and product eligibility processes utilized by the Director of Purchasing
 - Review of waivers granted by vendors and the State Purchasing Director
 - Determine appropriate application of the State Use law to procurement cards
 - Establish a threshold dollar amount of purchase by state agency or Unified School Districts for State Use Law to apply
 - Develop an electronic procurement system for the State Use Law system
 - Any other issue identified by interested parties
- The Director of Purchasing shall convene quarterly meetings with qualified vendors, the State Use Law Committee and agencies to discuss the State Use Law.

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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 2688: State Procurement
Testimony presented before the Senate Ways and Means Committee
By
Dr. Kent Hurn, Assistant Lobbyist
United School Administrators of Kansas

April 29, 2004

Mister Chairman and
Members of the Senate Ways and Means Committee

School districts have been asked for many years to improve their efficiency. They ask for bids in goods and services to achieve the lowest prices and the best quality items within their specifications. Economies of scale are offered with purchasing large quantities. Smaller districts have formed purchasing co-operatives to achieve these economies of scale.

The Deaf/Blind services may be deemed to not meet the qualified vendors' specifications. If there is a dispute a waiver is to be obtained from a committee to be purchased elsewhere. It would seem that all qualified vendors should be able to meet the qualifications that are on the state bid list for specific items.

We are asking that the Senate Ways and Means committee exempt school districts from the waiver process by a committee on goods and services that do not meet specifications. But the agency should be allowed to bid as any other qualified vendor.

School districts can get a waiver from the vendor but only if they are not timely or can not meet specifications. Many in the less populous districts will be placed in a position of the waiver process which in itself will not be timely.

We believe that the local board of education is in the best position to determine the specifications for goods and services. They are also in the best position to determine the lowest and best bidder for those goods and services.

Finally, school districts should not be placed in a position where they purchase items from a state agency just because it is a state agency. The lowest and best bid sometimes are two choices. We ask that you consider school districts exempt from HB 2688.

Thank you for your attention.



Senate Ways and Means
Senator Morris, Chairman

H.B. 2688 – State Use Law

April 29, 2004

*Presented by: Diane Gjerstad
Wichita Public Schools*

Mr. Chairman, members of the committee:

The Wichita Public Schools has cooperated with the provisions of current statute requiring school districts and state agencies to purchase products produced by blind or handicapped workers. However, the district's purchasing director is very concerned with this expansive bill and how a new layer of bureaucracy and paperwork for schools to buy goods *and now services* would impact their mission to meet the needs of 100 schools in a timely and cost effective manner.

At a time when school districts are the subject of Legislative Post Audits questioning the number of "non-instructional staff" and we continue to hear comments "why don't more dollars reach the classroom", schools are admittedly sensitive to laws which inhibit our ability to do business efficiently and effectively.

The past several sessions the legislature has modernized school district purchasing statutes. Changes supported by the legislature permit school districts to use emerging technologies, including on-line bidding, and inter-state buying cooperatives, all in an effort to use scarce taxpayer resources most effectively. H.B. 2688 deals with a valid public policy concern, however the policy must be balanced with the financing constraints schools face today. A few concerns with H.B. 2688 as amended by the House:

- As written schools would be only able to reject a bid based on delivery but not price... which statute takes precedence: the use law or lowest responsible bidder?
- The bill as written will substantially increase paperwork for schools on any product listed in the vendor catalog at a time when districts are asked to do more with less.
- In the new bill it appears if a product did not meet specifications the district would have to formally notify the vendor and allow for the vendor to submit an alternative product, then approval from D of A would be required before a district could purchase from another vendor.
- How will procurement card purchases be handled? Will waivers be required?
- Should the public policy supporting the disabled community extend to cities and counties?

Mr. Chairman, this bill has changed significantly since it's introduction. We do not disagree the use law should be examined in light of today's purchasing standards and school finance constraints. But there are 302 school districts impacted. Because there appears to be no urgency for the passage of this bill, we would suggest you instruct the vendors meet with school district business officers and purchasing agents (KASBO) during the summer to review the changes and make comments on how to make this policy effective while not being too cumbersome, and report back to your committee in January. The Kansas Association of School Business Officers (under USA's umbrella) could easily accommodate a meeting between the providers and schools during KASBO annual meeting and report back to your committee next session. Thank you.

*Senate Ways and Means
4-29-04
Attachment 3*