

MINUTES OF THE HOUSE APPROPRIATIONS COMMITTEE

The meeting was called to order by Chairman Kevin Yoder at 1:37 p.m. on April 30, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Tom Sawyer- excused

Committee staff present:

Jim Wilson, Office of the Revisor of Statutes
Christina Butler, Kansas Legislative Research Department
Audrey Dunkel, Kansas Legislative Research Department
J.G. Scott, Kansas Legislative Research Department
Kelly Cure, Chief of Staff
Kathy Holscher, Committee Assistant

Conferees appearing before the Committee:

Representative Kleeb - Proponent
Representative Burgess - Proponent
Representative Otto - Proponent
Bob Vancrum, Geographic Solutions, Inc. - Proponent
Chris Howe, Division of Purchases - Opponent

Others attending:

See attached list.

HB 2403 - Transparency and accountability in purchasing and state spending act.

Introduction of Legislation

Representative Brunk requested introduction of legislation to restore the sales tax exemption for Goodwill Industries or Easter Seals.

Representative Watkins made a motion to introduce legislation for the restoration of sales tax exemption for Goodwill Industries or Easter Seals. The motion was seconded by Representative Mast. Motion carried.

Representative Kleeb provided testimony on **HB 2403**, (Attachment 1). This expanded act places emphases on the importance of fairness, and would maximize results and minimize expenditures. The need to review, investigate and analyze the current bidding process for contracting services and products with vendors or suppliers was recommended. And, annual reporting, which would include vendor specific detailed information, would be submitted to House Appropriations and Senate Ways and Means committees by the state purchasing department on or before January 12.

Representative Kleeb responded to questions by Committee members regarding the bidding process, Interstate Commerce laws, privatization and outsourcing opportunities.

Representative Burgess provided testimony on **HB 2403**. Reference was made to the state rental car contract, which was awarded to an out-of-state vendor. This proviso would enhance the process and reduce costs.

Representative Otto provided testimony on **HB 2403**. Concerns were expressed regarding the fairness and transparency of the bidding process, and work opportunities for Kansas contractors.

Bob Vancrum, Geographic Solutions, Inc., provided testimony on **HB 2403**. (Attachment 2). As a strong proponent of this bill, Mr. Vancrum discussed concerns for the procedures involved with requests for proposals, (RFP). He emphasized the need for Section 5, which would authorize the legislative coordinating council to appoint a special committee that would review and evaluate opportunities for outsourcing or privatizing governmental operations and programs.

CONTINUATION SHEET

Minutes of the House Appropriations Committee at 1:37 p.m. on April 30, 2009, in Room 143-N of the Capitol.

Chris Howe, Director of Purchases, Department of Administration, provided testimony on **HB 2403**, (Attachment 3). An overview of the purchasing process was provided. An explanation of sealed bids and negotiated procurements was reviewed.

Mr. Howe responded to questions from Committee members regarding privatization, contract time frames, reverse options and utilizing temporary positions.

The hearing on **HB 2403** was closed.

The meeting recessed at 2:32 p.m. for the purpose of Caucus.

Chairman Yoder called the meeting back to order at 2:55 p.m.

SB 22 - H Sub. For S 22 by Committee on Appropriations - Omnibus appropriation act and omnibus reconciliation spending limit bill for the 2009 regular session.

Representative Watkins made a motion to remove the contents of SB 22 and insert the contents from HB 2022. The motion was seconded by Representative Whitham. Motion carried.

Representative Watkins reviewed the Proposal to Solve the \$138.7 Million Shortfall, (Attachment 4). It was noted that the \$4.2 million in KSIP funds and \$5.1 million in fee fund reductions would be repaid in FY 2012. The 5 percent salary reduction recommendation would effect every state employee, with the exception of the Board of Regents due to the requirements of the American Recision and Recovery Act. The tax amnesty program allows back taxes to be repaid without penalty if paid within a specific time frame. The total SGF savings is \$173.7 million and a projected ending balance of \$35 million.

Representative Watkins made a motion to adopt the proposal. The motion was seconded by Representative Whitham.

Representative Watkins responded to questions from Committee members regarding salary reductions in order to keep people employed and avoid layoffs.. The April 17th consensus estimates and the obligation to balance the state budget was reviewed. Not all fee funds would be swept and this would not have a negative impact on the agencies. It was noted that decoupling was not a part of this plan and with the maintenance of effort, cuts would not be possible without the risk of losing stimulus dollars. Committee members recommended restoring employee wages, if receipts improve, as a priority at the beginning of the next legislative session.

Representative Watkins amended the motion to give flexibility and authority to the Secretary of the Division of Budgets as needed for cash flow purposes within the fee funded agencies. This amendment was approved by Representative Whitham as the second to the motion.

Committee members discussed: KTEC funding; the need for tax committee proposals before making additional cuts; wage reductions; and the possibility of the Board of Regents 5 percent reduction in FY 2012. It was noted that any budget cuts to K-12 and higher education can not be disproportionate in accordance with the American Recision and Recovery Act.

The meeting recessed at 3:45 for House Session.

Chairman Yoder called the meeting back to order at 5:31 p.m.

Committee members continued discussion on **SB 22 - H Sub. For SB 22** in regards to the impact on employee contributions on their KPERS contribution, and options for the loan repayment with a 5 percent reduction in FY 2012 in the Board of Regents budget.

Jim Wilson, Office of the Revisors, stated that retirement contributions are calculated by employee wages.

CONTINUATION SHEET

Minutes of the House Appropriations Committee at 1:37 p.m. on April 30, 2009, in Room 143-N of the Capitol.

Representative Watkins amended the previous motion to apply the 5 percent reduction from the Board of Regents FY 2010 budget, which would go into the agency's tuition stabilization fund. The amendment was approved by Representative Whitham as the second of the motion.

Representative Watkins responded to questions from Committee members. It was noted that the amendment would be included in the motion which would keep the tuition flat and not have an impact on the stimulus money or effect the bottom line of the SGF.

Representative Watkins renewed the motion as amended to adopt **SB 22**. Motion carried.

Representative McLeland made a motion for a proviso for **SB 22** regarding any information received by the Executive Chief Information Technology Officer, regarding projects that have been downgraded, must notify the Joint Committee on Information Technology within 48 hours of receiving the information. The motion was seconded by Representative Mast. Motion Carried.

Representative McLeland made a motion for a provision for **SB 22** regarding Executive Chief Information Technology Office quarterly reports which would be required to be completed 15 days after the end of each quarter, and a report to submitted to the Joint Committee on Information Technology within 30 days at the end of each quarter. The motion was seconded by Representative Watkins. Motion carried.

Discussion followed by Committee members regarding the need for this proviso to be in bill form next year.

Representative Watkins made a motion for favorable passage of **SB 22** with technical amendments by the Office of the Revisors. The motion was seconded by Representative Whitham. Motion carried.

The next meeting is on call of the Chair.

The meeting was adjourned at 5:55 p.m.



Kevin Yoder, Chairman

APPROPRIATIONS COMMITTEE GUEST LIST

DATE: 4-30-09

NAME	REPRESENTING
Berend Koops	Hein Law Firm
Marilyn Jacobs	DOH
George Teagarden	KAMD
Mel Peterson	K-STATE
Andy Schlapf	WSU
Debra Prideaux	7HSU
RC Luntz	Public Solutions
Nancy Bryant	KSOJ
Jim Brant	KSC
Ken Luhn	KARR/KATV/Bio
Doug Wareham	KBA
Nathan Eberline	LKM

TESTIMONY SCHEDULE

Bill No. HB 2403

Hearing Date April 30, 2009

Concerning: Transparency and accountability in purchasing and state spending act.

PROPONENTS

1. Bob Vancrum, Geographic Solutions, Inc.
Written Material
2. _____
3. _____
4. _____
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OPPONENTS

1. Chris Howe, Division of Purchases for State
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5. _____
6. _____
7. _____
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10. _____

NEUTRAL

1. _____
2. _____
3. _____
4. _____
5. _____

HB 2403
TRANSPARENCY AND ACCOUNTABILITY
IN PROCUREMENT AND STATE SPENDING (TAPSS)

1. When a state agency or procurement authority does not select a Kansas vendor/supplier of services or products, it must state in writing the reason.
 - Domiciled in Kansas
 - Work performed by employees subject to Kansas withholding taxes
 - Business subject to Kansas taxation
2. When any state agency does not select the lowest bidder and why deficiency could not be remedied, it must state in writing the reason.
3. Any state contract with automatic renewal or extension shall be reviewed for cost savings potential before automatic renewal allowed.
4. Annual reporting and summary by January 12th to House Appropriations and Senate Ways and Means by state purchasing of explanations to above.
5. Legislative coordinating council shall appoint a special committee to study, review and evaluate opportunities to:
 - Improve efficiency, productivity and save money through outsourcing or privatization of government services
 - Improve services, reduce duplication and save money by transitioning to non-profit organizations government services
 - Review potential savings from eliminating duplication of services provided by the federal and state government
6. The special committee shall also investigate governmental operations and programs that compete with business or private organizations.

Marvin Kleeb
48th District
Kansas House of Representatives

Appropriations Committee

Attachment 1

Date 4-30-09

TESTIMONY TO THE HOUSE APPROPRIATIONS COMMITTEE
ON HB 2403 "TRANSFERABILITY AND ACCOUNTABILITY IN PURCHASING"

APRIL 30, 2009

BOB VANCURUM, AS REPRESENTATIVE OF GEOGRAPHIC SOLUTIONS, INC

CHAIRMAN YODER AND OTHER HONORABLE REPRESENTATIVES:

We are a strong proponent of this bill. While we don't think Section 2 or Section 3 go far enough, there is a major need for far more fairness and transparency in the purchasing of services by the state. We also think there need to be substantial penalties upon agencies who don't follow the act. Having said that, there is little fairness or transparency as things currently operate/

Several of you were probably on the subcommittee handling Department of Commerce Budget last year when I told my client's experiences. I know that the subcommittee put in its report that there should be a study of the activities of what appears to me to be a rogue division in the KDOC which markets itself nationwide as America's Job Link Alliance. But since most of you weren't, the story can be shortly related.

In early 2007 the purchasing division of DOA put out a formal RFP at the request of KDOC asking for proposals to rewrite and modernize and make more user friendly the states; Job Link system used for those undergoing work force retraining, be they people who've lost jobs or about to lose jobs, those on welfare, or those who have recently received their GED. My client responded and was asked to come in for a session before the Procurement Negotiating committee, composed of both KDOC and DOA people.

Despite the fact the original request and subsequent postings indicated a fairly quick decision would be made, they were never notified that an award had been made. They ***discovered that the winning "bid" ultimately accepted, was a division within workforce training that runs the job link service within KDOC!!!!***

This is the same group that designed the system their colleagues were seeking to have substantially improved!!!! We then made several open record requests and the filed of a bid protest which was never responded to either (under the very flawed Kansas system, the appeal is to the same head of purchasing that had to sign the award to begin with!) Based on what we discovered, we subsequently withdrew the protest in disgust since it

Appropriations Committee

Attachment 2-1

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became obvious we were an unwitting part of an unfair RFP which was at least a complete perversion of the RFP process, if not a blatant scheme to steal proprietary information that would probably be unfair competition leading to substantial damages if public entities could be sued.

What was it we discovered? *a letter from the purchasing officer of DOA supposedly running the RFP process telling the rogue division, AJLA as described above, that their co-workers within workforce development at KDOC wanted them to agree to work with "third party vendors" (who mysteriously were never named) to build a user friendly system that was like some of the other systems they had just seen!* A letter from AJLA dated the next day was also found in the file in which AJLA agreed to do so, though it haughtily accused rest of workforce development of bad communication.!!

Worse yet, this same AJLA has dozens of positions on the state payroll and retirement plan and *uses state resources to compete in nearly all other states in competition* with my client and several other specialized website development and hosting companies that supply this service to State labor departments around the country..

That's right, this rogue division spends most of its time working on contracts with other states with the tax dollars of our citizens. Could that be why there was such bad communication with their own workforce development colleagues that they felt they had to put out an RFP to do what the Secretary should have ordered them to do in the first place???

When confronted with this last year, Secretary Kerr's answer was that they do these RFPs every now and then to see if they are getting state of art work. He further said it was just fine because the state was making money on these contracts. IF that's true its because they are using our tax dollars and the state's freedom from taxation to undercut private businesses . *It also ignores the HUGE exposure to the state for liability if one of states has a bad experience with websites designed by ourr employeews. Of course, that's no worry for commerce since the bill would come to the legislature not out of KDOC's budget, let alone AJLA.*

In any event, neither the Division of Purchasing or KDOC yet been called to account for this travesty Maybe this will be the first committee that calls for reform. I also think before other programs in workforce development are cut in this recession period, AJLA should be eliminated.

Testimony on HB 2403

April 30, 2009

Offered by:

Chris Howe, Director of Purchases
Kansas Department of Administration
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Topeka KS 66612-1286
Telephone: 785-296-2374
Email: chris.howe@da.ks.gov

Mr. Chairman and Committee Members:

Thank you for this opportunity to speak to you today.

My testimony today isn't so much an opposition to the concepts presented in HB 2403, as it is to the form that it has taken, and that, if passed in its current form, could create conflicts with existing statutes governing the procurement processes.

In all of our efforts to educate our agency customers about the purchasing process, we emphasize our statutory and moral responsibility to the taxpayers of the State of Kansas to pursue **competitive bids** and that our goal is to award to the **apparent low bid meeting specifications**.

The Division of Purchases currently has access to two primary types of bid processes which are governed by separate statutory boundaries:

- Sealed Bid Procurements (K.S.A. 75-3739 *et seq*); and
- Negotiated Procurements (K.S.A. 75-37,102),

Up to the point where bids are submitted by vendors, the processes are similar, but once the bids have been opened and the review process begins, things become very different. In a **negotiated transaction**, procurement officers have the ability to review bids and, in consultation with the agency, consider changes to a vendor's bid response. In a **sealed bid** environment, we do not have the flexibility to negotiate; we must evaluate the bids as they were presented at the time the bids close.

According to Section 2 of HB 2403:

...When any contract for the purchase of goods or services by any state agency, as that term is defined in K.S.A. 75-3701, and amendments thereto, is not awarded to a vendor after such vendor has submitted the lowest bid for such contract, the director of the division of state purchasing shall prepare a written explanation detailing the reasons why such vendor was not awarded the contract and why the deficiencies in such vendor's bid could not be remedied to the satisfaction of the director.

We allow ourselves the ability to resolve "minor deviations" in sealed bids, but stay true to the statutory instructions, we do not allow wholesale negotiation of these sealed bids. Sealed bids are typically used for the purchase of goods and basic services.

Because of the time and effort involved with negotiated procurements (in part by statute and in part by policy), we reserve negotiated procurements for our more complicated transactions. We've increased the

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number of negotiated procurements since 2003 and we push agencies to consider and review bids by "starting with the lowest bid and working their way up..."

Section 3 establishes a preference for Kansas bidders, but doesn't include any limits to that preference. Most states with preference laws limit the preference to a percentage of cost, and most states use the concept of reciprocity, which would penalize Kansas bidders seeking business outside of our borders by the same percentage. (Kansas Reciprocity Statute: K.S.A. 75-3740a)

This legislation will impact transactions that are outside the statutory realm of the Division of Purchases, including Highway Construction, Regents Pilot Project and any other procurements made by agencies that may already have statutory exemptions from basic procurement statutes.

Thank you for your time and consideration. I'll stand for any questions you might have.

House Appropriations Committee

Proposal to Solve \$138.7 Million Shortfall

1) Do Not Pay second half of \$25 Million Slider payment to cities and counties (Gov Rec)	25
2) Do Not make \$5 Million payment to City/County Highway Fund (Gov Rec)	5
3) Capture \$4.2 Million KSIP funds (Gov Rec)	4.2
4) Borrow \$22.4 Million from fee fund balances (Gov Rec)	22.4
5) Borrow \$5.1 Million in fee fund reductions (Gov Rec)	5.1
6) One-time reduction of state-employee salaries of 5%, sunsets at end of FY 2010	40
7) Account for \$22 Million in tax amnesty	22
8) Account for \$50 Million in Gaming Revenue (Gov Rec)	50

Total in savings of SGF \$173.7

Projected Ending Balance \$35 M

Appropriations Committee

Attachment 4

Date 4-30-09