

CHAPTER 40
SENATE BILL No. 449

AN ACT relating to roads and highways; concerning bids; amending K.S.A. 68-704, 68-705, 68-1113, 68-1114, 68-1115, 68-1117, 68-1118, 68-1119, 68-1120, 68-1121 and 68-1125 and repealing the existing sections.

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

Section 1. K.S.A. 68-704 is hereby amended to read as follows: 68-704. The board of county commissioners may conduct the improvement of the road in conformity with the profile, plans and specifications as filed; may let contracts for the construction of any portions of the work required in making the improvements; or may let contracts for the labor only, or the labor and a portion of the material, and purchase any or all of the materials for the improvements of the highway and supply the same to the contractor or contractors. ~~The price paid for such materials shall be approved by the secretary of transportation.~~

If the work is let by contract, notice shall be published in the official county newspaper once each week for two consecutive weeks prior to the letting. No bids shall be accepted except in accordance with the profile, plans and specifications, and such contracts shall be let to the lowest responsible bidder, the board of county commissioners reserving the right to reject any or all bids. Each bidder must accompany the submitted bid with a bid surety in an amount equal to 5% of the amount of the bid payable to the chairperson of the board of county commissioners as a guarantee that, if the contract is awarded to the bidder, the bidder will enter into the contract with the board. If a bidder fails to enter into the contract when awarded to the bidder, the bid surety shall become the property of the county as its liquidated damages and shall be paid to the county treasurer for credit to the general fund of the county.

Each contractor shall give a good and sufficient performance bond in an amount fixed by the board of county commissioners, but not less than the contract price, and the bond required by K.S.A. 60-1111, and amendments thereto. The performance bond shall be filed and recorded in the office of the county clerk or some other county officer designated by the board of county commissioners and approved by the board of county commissioners and shall be conditioned on the contractor's faithful performance of the contract in every respect and secure the county against any and all loss or damage by reason of any default, failure or miscarriage in the performance of the contract. The board of county commissioners, at any time before entering into a contract, may withdraw any or all proposals and take charge of and conduct the improvement.

No action shall be brought to restrain the making of the improvements, or payment therefor, or levy of taxes or special assessments or issuance of bonds therefor on the ground of any illegality or irregularity in advertising, receiving bids or awarding the contract, or any proceedings prior to the award of the contract or decision by the board to make such improvements by day labor, unless such action is commenced within 30 days after the date the contract is awarded or the board makes the decision to make the improvements by day labor.

The board of county commissioners, as required, shall issue warrants of the county drawn on a special fund for the improvements, the purchase of materials, the payment of wages, and other expenses incurred in making the improvement or for payment to the contractor of not to exceed ~~90%~~ 95% of the work done and accepted under the provisions of this act. If a person or company with whom a contract is made under the provisions of this act fails to fulfill the contract, the board of county commissioners may cause the work to be completed and material furnished in full as provided in such contract and recover the full cost thereof from such person or company and the sureties on any bonds given, less any amount unpaid on the contract.

~~In completing the work and furnishing the material, the board may award contracts or not, as it may elect. The board of county commissioners may purchase or lease any gravel pits, stone quarries or other native road material, open and improve the roads necessary to and from any gravel pits, stone quarries, or other native road material, and pay for such gravel pits, stone quarries, native road material or roads out of the county road fund of the county if the cost does not exceed \$5,000, for each of~~

such gravel pits, stone quarries, native road materials or roads. If the board of county commissioners conducts the improvement of a road and undertakes the complete construction of the road, the board may issue and sell bonds of the county to purchase and pay for road machinery, tools and equipment that the board deems necessary to do the work or to pay for any such machinery, tools and equipment previously purchased. Before any machinery, tools and equipment are purchased, the county engineer shall prepare an estimate of the kind, quantity and cost of such machinery, tools and equipment, which estimate shall be approved by the state transportation engineer before the machinery is purchased. The bonds shall mature in not more than 20 years, shall bear interest at not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, and amendments thereto, payable semiannually, and shall be signed and registered as provided by law.

— Upon the completion of any road in any project or benefit district, the board shall cause an estimate to be made by and with the approval of the state transportation engineer and the county engineer of the current cash value of the machinery, tools and equipment purchased and shall charge to the finished road project the value of such machinery, tools and equipment and the interest on the bonds issued therefor. Upon the completion of any other road project upon which such machinery, tools and equipment are similarly used, the board shall have an estimate made of the current cash value and charge to such road project the depreciation in such equipment below the estimated value at the time such road project was undertaken. The board of county commissioners may retain any part of the machinery, tools and equipment for general road work. If the machinery, tools and equipment are retained, the board shall estimate with the approval of the state transportation engineer and the county engineer the current cash value of the retained machinery, tools and equipment and shall charge to such road work the depreciation on the portion of the machinery, tools and equipment retained. The retained machinery, tools and equipment shall be the property of the county, and the bonds issued therefor shall in proportion be redeemed by a special levy made for such purpose. When the county commissioners shall have no further use for such machinery, tools and equipment, the board shall sell the machinery, tools and equipment at the best price obtainable and use the funds secured from such sale in retiring the bonds issued for the purchase of the machinery, tools and equipment.

Sec. 2. K.S.A. 68-705 is hereby amended to read as follows: 68-705. All work done and materials furnished shall be under the supervision and inspection of the county engineer, ~~the state transportation engineer or a competent and experienced highway or licensed professional~~ engineer employed by the county; and shall be in conformity with the plans and specifications and the contract therefor. The acceptance of any work or material by such engineer shall not bind the county nor excuse the contractor for failure to comply with such contract. No changes shall be made except by written contract with the board of county commissioners, ~~approved by the state transportation engineer.~~

Sec. 3. K.S.A. 68-1113 is hereby amended to read as follows: 68-1113. All bids shall be made on the proposal blanks furnished by the county, signed by the bidder, sealed and presented by the bidder, ~~his or her the bidder's~~ agent or attorney (or sent by mail), to the county clerk. ~~The form of said county proposal blanks shall be approved by the secretary of transportation and shall be uniform for each county in the state.~~ The board shall conduct the letting of all contracts for bridge and culvert work in such a manner as to give free, open competition, and all *qualified* bidders shall be given an equal opportunity to bid upon the plans and specifications on file, and they shall be required when bidding a lump sum on two or more bridges or culverts to also submit a separate proposal on each of ~~said the~~ bridges or culverts included in their proposals.

Sec. 4. K.S.A. 68-1114 is hereby amended to read as follows: 68-1114. Each bidder shall be required to deposit with ~~his or her such bidder's~~ proposal a good and sufficient surety bond issued by a company authorized to do business in this state, a certified check or a cashier's check in an amount of not less than ~~fifty dollars (\$50) or more than ten percent (10%)~~ 5% of such bid proposal, in the discretion of the board, payable to the county treasurer. If the bidder to whom the contract is awarded shall fail to accept and execute the contract and file a bond as provided in this act, ~~his or her the bidder's~~ check shall be forfeited and

paid to the county treasurer; and the board may award the contract to the next lowest responsible bidder.

Sec. 5. K.S.A. 68-1115 is hereby amended to read as follows: 68-1115. The bids received shall be opened publicly by the board *or the board's designee* at the place, date and hour named in the advertising notice, and shall be recorded in detail in ~~a book kept for that purpose by the county clerk; said book shall be open at all times to the public for inspection~~ *the minutes of the board of county commissioners or a record kept for that purpose by the county clerk*. All bids shall be considered; and accepted or rejected. In case the work is let at such public letting, *the* contract shall be awarded to the lowest responsible bidder, or the board may, if it deems the proposals too high, reject all bids and re-advertise the work as before, or it may let the work privately by submitting the contract, with a statement of the reasons for rejecting the bids at the public letting, to the secretary of transportation for approval: ~~Provided, except that no contract shall be let at an amount exceeding the county engineer's estimated cost or at a higher price than the lowest responsible bid received at the public letting.~~ The opening of any bid by any person after the ~~same bid~~ has been filed with the county clerk and before the time appointed for the opening of bids shall be a class C misdemeanor.

Sec. 6. K.S.A. 68-1117 is hereby amended to read as follows: 68-1117. Within ~~ten (10)~~ 30 days after any public letting, the bidder to whom any contract shall be awarded shall enter into contract with the board of county commissioners and shall give bond ~~unto~~ to the county in a penal sum equal to the amount of the contract price, conditioned upon the faithful performance of *the* contract and guaranteeing the county against loss from defects of workmanship and materials. The sufficiency of ~~said~~ *the* bond shall be approved by the ~~chairman~~ *chairperson* of the board of county commissioners, but the county shall not be bound ~~thereby~~ until the county attorney *or county counselor* approves the form ~~thereof~~ as legal and binding upon both parties by ~~his~~ *the county attorney's or county counselor's* signature endorsed thereon.

Sec. 7. K.S.A. 68-1118 is hereby amended to read as follows: 68-1118. It is hereby made the duty of the county attorney *or county counselor*:

(a) To personally examine as to form, the advertisement, proposal, contract, plans, specifications, bond and the minutes of the board's meeting for each bridge or culvert proposed to be built or repaired by contract; *and*

(b) to determine whether the contract has been awarded in strict compliance with this act; ~~and~~

No contract shall be legal and binding on the county until ~~said the~~ contract is signed by the ~~chairman~~ *chairperson* of the board of county commissioners, by order of ~~said the~~ board at a legal meeting thereof, and approved by the county attorney *or county counselor* by ~~his~~ *the county attorney's or county counselor's* signature endorsed thereon.

Sec. 8. K.S.A. 68-1119 is hereby amended to read as follows: 68-1119. If the county engineer deems it necessary ~~he or she~~ *the county engineer* shall appoint, with the approval of the board, a competent inspector to ~~superintend~~ *inspect* the construction of any bridge or culvert work; ~~and~~. The county engineer shall be in direct charge of all construction work; and may remove such inspector at any time for cause: ~~Provided, except that when federal aid is granted for the construction of any bridge or culvert work such construction shall be under the direct supervision of the secretary of transportation. The fact that the county has an inspector on the work shall in no wise not release the contractor from the entire fulfillment of the terms of his or her such contractor's contract.~~

Sec. 9. K.S.A. 68-1120 is hereby amended to read as follows: 68-1120. The board of county commissioners may make partial payments upon written estimate of their engineer, on any contract for bridge or culvert work under this act as the ~~same work~~ progresses; ~~but, except that at no time shall more than ninety percent (90%) 95% of the estimate of the materials at such time furnished and of the work at such time done be paid in advance of the full and satisfactory completion of said the work.~~ Final payment shall not be made on any of such contracts ~~where the amount of the contract involved exceeds three hundred dollars (\$300) by any county board~~ until the county engineer has inspected the structure and certified in writing that the work has been done properly and completed according to contract, plans and specifications, and *the* labor and

materials *have been* paid for, and the county engineer's certificate to that effect ~~shall be~~ *has been* filed in the office of the county clerk. The acceptance of any bridge or the approval thereof shall not relieve the contractor or sureties of such contractor from any liability for any failure to fully perform the contract or under any provisions of such contractor's bond.

Sec. 10. K.S.A. 68-1121 is hereby amended to read as follows: 68-1121. It shall be the duty of the county engineer in the several counties of the state to keep separate itemized accounts of all expenditures for the construction and maintenance of each county bridge and culvert in a ~~book~~ *record* prepared for that purpose.

Sec. 11. K.S.A. 68-1125 is hereby amended to read as follows: 68-1125. The township board in letting contracts for the construction or maintenance of township ~~bridges and~~ culverts shall follow the plans and specifications of the county engineer.

Sec. 12. K.S.A. 68-704, 68-705, 68-1113, 68-1114, 68-1115, 68-1117, 68-1118, 68-1119, 68-1120, 68-1121 and 68-1125 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 8, 2004.
