

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Susan Wagle at 8:30 a.m. on February 17, 2011, in Room 548-S of the Capitol.

All members were present except:
Senator Jay Emler

Committee staff present:
Ms. Margaret Cianciarulo, Committee Assistant
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department
Ms. Dorothy Noblitt, Kansas Legislative Research Department

Conferees appearing before the Committee:
Ms. Kathie Sparks, Deputy Secretary, Department of Labor
Mr. Stan Ahlerick, President, Kansas Inc.
Senator Faust-Gaudeau
Representative Gail Finney
Former Senator Eugene Anderson, Chairman of United Builders & Contractors, Wichita, Ks.
Mr. Chester Daniels, President & CEO, Urban League of Kansas
Mr. Lazone Grays, Jr., President & CEO of Urban League of Kansas
Mr. Bob Totten, Public Affairs Director, Kansas Contractors Association
Mr. Corey Peterson, Executive Vice President, Associated General Contractors of Kansas Inc.
Mrs. Lindsey Douglas, Chief of Governmental Affairs, Kansas Department of Transportation

Others attending:
Please see attached list.

Reconsider action on SB137 – an act concerning the employment security law; relating to unemployment benefits for privately contracted school bus drivers.

Upon calling the meeting to order, the Chair recognized Ms. Kathie Sparks, Deputy Secretary, Department of Labor, who has requested the Committee call **SB137** back to make changes in the language offered by the US Department of Labor. Chairperson Wagle said she would like to pull back the bill, work it next week, and have the Department of Labor come to the Committee meeting to explain what changes, if necessary, are needed. Senator Merrick made a motion to reconsider action taken at the February 16, 2011 meeting and pull it back into the Committee. It was seconded by Senator Longbine and the motion passed.

Hearing on ERO37 – abolishing Kansas, Inc. as established by K.S.A. 74-8000 et. Seq. and appointing the Secretary of Administration to efficiently wrap up and conclude the affairs of Kansas, Inc. and to satisfy any outstanding liabilities or commitments of Kansas, Inc.

The next order of business was a hearing on **ERO37**. The Chair explained that an ERO is sent to both the House and Senate. The Committee can reject it by sending it out of Committee and objecting to it on the Floor. If the Committee agrees with the order, then it should be left in the Committee and no action should be taken. She then asked for questions, as there were none, she called on the only conferee to testify, Mr. Stan Ahlerich, President, Kansas Inc., whose testimony included:

- 1, Its history, stating over the past two decades, Kansas has chosen to build an economic development model that primarily relies on free-standing agencies governed by independent boards of directors. Kansas Inc. was established in 1986 in connection with the so-called Redwood-Krider plan and is the only agency in the state in which the sitting Governor is statutorily appointed to co-chair the Board of Directors.
2. The model offers a sound operational foundation, provides for strong stakeholder input and offers an opportunity in the context of the transient executive leadership in state government. However, over the years it has yielded to the dispersed interests and agencies of the many stand-alone economic development-related agencies.
3. The Department of Commerce holds the position in the State's model as the lead agency by the implementation of economic policy. Yet the department is the only executive agency and it has limited

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official means to act as the lead economic development agency with respect to board-directed agencies. He went on to say the plan seeks to dissolve the current structure of Kansas Inc. and replace it with the Governor's Council of Economic Advisors which will offer a response to the lack of coordination and accountability in the current economic development systems and enhance and fill the original concept of Kansas Inc. He went on to explain the Council's:

1. Organization, including: it is chaired by the Governor, meets quarterly, and whose 15-20 members could be leaders from within or outside the state.
2. Functions, including strategic planning and resource coordination, evaluation of policies agency performance, and research.

Lastly he said this plan also moves the functions of the Kansas Technology Enterprise Corporation (KTEC) into the Kansas Department of Commerce. A copy of his testimony is (Attachment 1) attached as incorporated into the Minutes as referenced.

The Chair thanked Mr. Ahlerich and asked for questions or comments from the Committee which came from Senators Lynn, Holland, and Steineger including: this will provide the Governor a more cohesive comprehensive effort about the state. Will you remain with the Council and will we still be getting reports as requested? (Yes.) This is about applying business principles to government.

As there were no more questions or comments, the Chair asked what is the Committee's goal of this ERO? Senator Schodorf made a motion that the Committee support which means we take no action. It was seconded by Senator Lynn and the motion carried.

Hearing on SB140 – an act enacting the Kansas small and disadvantaged business development

The Chair said the next order of business was a hearing on **SB140** and called on Mr. Reed Holwegner, Kansas Legislative Research Department, to explain the bill. Mr. Holwegner stated the bill would enact into Kansas law the disadvantaged business development program, organized within the Department of Commerce, to:

1. Develop programs to provide opportunities for participation by qualified minority and disadvantaged businesses in public works, and in the process by which goods and services are procured by state agencies and post-secondary institutions from the private sector.
2. Develop a comprehensive plan insuring that qualified minority and disadvantaged businesses are provided an opportunity to participate in public contracts for public work and goods and services.
3. Identify any barrier for key participation by qualified minority and disadvantaged businesses to provide an opportunity to participate in public contracts, for public works and goods and services.
4. Establish annual overall goals for participation by qualified minority, and women-owned and controlled businesses for each state agency and post-secondary educational institution, that would be administered on a contract-by-contract basis or on a class-of-contracts basis.
5. Maintain a central minority certification list for all state agencies and post-secondary educational institutions they could refer to.

In lieu of time, rather than explain each section, the Chair asked if Mr. Reed would explain the fiscal note. He stated that the Department of Commerce developed the fiscal note with the assistance of the Budget Division indicating if this bill did pass as is, it would cost \$210K. The DOC suggests that the money come from the State General Fund for the salaries and wages and operational expenses for three new FTE(full-time employment) positions to manage this program.

Chairperson Wagle stated she has received a call from Secretary George, Department of Commerce, last night who indicated his department does have a committee on women and minority businesses. As there were no questions for Mr. Reed, she thanked him and recognized the first of five proponents, Senator Oletha Foust-Gaudeau who stated the intent of this legislation is to stay with the theme of our new Governor, relating to job creation and growing the economy in Kansas, help sustain and grow our small businesses, and allow existing small businesses the opportunity to participate in the bidding process of local and state projects. A copy of her testimony is (Attachment 2) attached as incorporated into the Minutes as referenced.

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The Chair thanked the Senator and announced she would hold all questions until everyone had testified. She then recognized Representative Gail Finney, who stated the bill is asking Kansas to seriously include and set-up some type of quality supplier diversity program that would set goals to develop, utilize and encourage utilization of these businesses within state agencies and to help decrease the apparent disparity and low marginal participation by these businesses in Kansas. A copy of her testimony is (Attachment 3) attached and incorporated into the Minutes as referenced.

The next proponent to testify was former Senator Eugene Anderson, now Chairperson of United Builders & Contractors (UBA) from Wichita, who offered:

1. A short history on UBA including:

A. It is an association of African American owned businesses (ex. Construction, service and professional firms, supply vendors) and related associates joined together to promote growth and development of Wichita African American owned businesses.

B. Their primary objective is to break down and eliminate discriminatory procurement barriers in local and state government and the private sector.

2. Their request is for the legislature to enact a small and disadvantage business development act that will ensure the businesses they represent will have reasonable access to tax-supported government contracts.

3. Two study summaries, one prepared by the Urban League of Wichita for the Kansas Department of Transportation and the other for the City of Wichita by a City Council appointed task force along with the results.

4. Case studies showing the problems some minority businesses have encountered by their local government.

5. KDOT's expenditure of federal aid funds during FY2009 stating state allocated funds are not included. In conclusion he said, the solution to this problem is for the legislature to enact the proposed Kansas Small and Disadvantage Business Development Act, which will say to prime proposers, bidders, and government employees and officials on state projects that government will mandate opportunities for African American, other minority and women owned business participation on tax-supported projects. A copy of his testimony, attachments, and Volume No. 6 of the Kansas Statutes Annotated regarding the Small Business Procurement Act are (Attachment 4) attached and incorporated into the Minutes as referenced.

The fifth proponent recognized was Mr. Chester Daniels, President & CEO, of the Urban League of Kansas, Inc. who offered examples of the effort taking place in cities across the country to ensure inclusion and full participation of minority business owners in tax funded projects. For example:

1. In Atlanta where the Metropolitan Atlanta Rapid Transit Authority (MARTA) has developed a workforce that reflects its commitment to diversity. In 1999, women accounted for 32 percent of all promotions, a 28 percent increase since 1996.

2. In Tampa, Florida where they first passed the Women and Minority Business Enterprises' ordinance in the 1980s. Today Contractors hired by the city are required to have a certain percentage of women and minorities on staff if they employ more than 15 people and are seeking a contract of more than \$10K.

He also offered examples of minority set-asides citing Nashville, TN, Richmond, Virginia and the State of Ohio. A copy of his testimony is (Attachment 5) attached and incorporated into the Minutes as referenced.

The last proponent called to testify was Mr. Lazone Grays Jr., President and CEO for IBSA, Inc., a non profit tax-exempt corporation founded and based in Topeka, who stated IBSA serves many in target business populations identified in **SB140** and believes passage of this bill can institute practices and procedures that can lay a foundation to elevating populations from the bottom up.

He provided statistics from the US Census Bureau 2007 Special Tabulation for Minority Firms and from the Kauffman Index of Entrepreneurial Activity 1996-2009, that should, he said, be of interest to the Committee if taken at face value, to help shape concerns the conferees are hoping to address with the passage of this bill. A copy of his testimony and statistical data are (Attachment 6) attached and incorporated into the Minutes as referenced.

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Written proponent testimony came from:

- 1.) The Kansas State NAACP Conference of Branches, and Entrepreneurial Synergy, LLC by Ms. Glenda Overstreet, Vice President, Political Action Chair & Registered Lobbyist.
- 2.) Mr. James L. Bolden, Owner, JB Carpet & Upholstery Care.

Copies of the above written testimonies are (Attachment 7) attached and incorporated into the Minutes as referenced.

The Chair then called on the first of two opponents of the bill, Mr Bob Totten, Public Affairs Director, Kansas Contractors Association (KCA), who stated:

1. Their organization represents over 300 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest and has been the voice of the construction business since 1923.
2. They are opposed to a segment of this bill made in the bid statutes that are outlined on page 4, Section 6. He stated their membership is comfortable with the awarding of a contract based on the lowest and best responsible bid with this basic premise insuring that no company has a better chance to get a project than another.
3. Another concern is, a large portion of the work their members bid on is with the Kansas Department of Transportation (KDOT) or through KDOT for county work. If KDOT has to conform with this legislation, Kansas might find itself in conflict with the federal government and lose what federal funds Kansas receives for highway construction. (At last report, federal funding amounts to about \$366M a year or about a third of KDOT's budget.)

Lastly he stated, because of these concerns and the fact that the bidding laws have been vetted over a long period of time, KCA opposes this bill or suggests changes be made in Section 6. A copy of his testimony is (Attachment 8) attached and incorporated into the Minutes as referenced.

The second opponent recognized was Mr. Corey Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. (AGC) who is a trade association representing the commercial building construction industry, including general contractors, subcontractors, and suppliers in Kansas (with the exception of Johnson and Wyandotte counties.) He stated AGC has a long standing policy opposing bidder preferences and/or quotas and for similar reasons it opposes this bill. Lastly he said, AGC welcomes the opportunity to work with women or minority-owned or other disadvantaged companies to provide the tools and assistance necessary to thrive in the commercial building construction marketplace, but deems quotas and preferences of one company over another to be in conflict with the free market system and the association's current policy. A copy of his testimony is (Attachment 9) attached and incorporated into the Minutes as referenced.

The Chair then called on the only neutral conferee to testify, Mrs. Lindsey Douglas, Chief of Governmental Affairs for the Kansas Department of Transportation (KDOT) who stated they have established a Disadvantaged Business Enterprise (DBE) in accordance with 49 Code of Federal Regulations (CFR) Part 26, and:

1. Is required to operate the DBE program as a condition of receiving federal assistance from the US Department of Transportation (USDOT.)
2. The DBE program is established using 49 CFR Part 26 and current federal guidelines approved by the Federal Highway Administration.
3. The KDOT Office of Civil Rights and Kansas Department of Commerce are members of the Kansas Statewide Certification Program and jointly may certify construction and co-construction DBE's who are interested in doing work in the state of Kansas.

She stated current language in this bill raises concerns about KDOT's DBE program as it operates today. In order to continue receiving federal funds they must maintain a DBE program in accordance with 49 CFR Part 26, and federal guidelines. If they are required to meet goals within a program that does not comply with their governing federal regulations, they run the risk of losing their federal assistance. Lastly, she said that while KDOT agrees with the intent of the legislation, the department requests that the bill be amended to exempt KDOT from the legislation. A copy of her testimony is (Attachment 10) attached hereto and incorporated into the Minutes as referenced.

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As there was no further testimony, Chairperson Wagle asked Mrs. Douglas, with the passage of this bill will you be out of federal compliance? (Yes.) And to Mr. Anderson, how many businesses are in your association? (About 65.)

The Chair then asked for questions or comments from the Committee which came from Senator Masterson to Mr. Lewis including who qualifies as a “small business”, does it have to be owned by the minority, just trying to figure out who exactly we are trying to reach here? (The “small” that you refer to is any small business no matter who owns it. The federal government has a definition of Small Business Associations (SBA), laying out what constitutes a minority or disadvantage business, and to be considered one, you have to be at least 51% owned and controlled by a racial minority or economically disadvantaged person in our country.) In placing a bid, do you need to show you are capable of doing the job for which you are applying for under this bill? (Not aware of any owner of a project who would hire a person who was not capable of performing the job. But if a minority business was a prime contractor and the project was technical in nature, they would probably hire a subcontractor that was qualified.)

Adjournment

As it was time for the next Committee to come in, the meeting was adjourned. The time was 9:31 a.m. The Chair said they would have further discussion on this.

The next meeting is scheduled for February 22, 2011.