

January 31, 2012

The Honorable Susan Wagle, Chairperson
Senate Committee on Commerce
Statehouse, Room 135-E
Topeka, Kansas 66612

Dear Senator Wagle:

SUBJECT: Fiscal Note for SB 268 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 268 is respectfully submitted to your committee.

SB 268 would create the Kansas Small, Minority, and Women-Owned Business Development Program within the Department of Commerce. This program would:

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

The bill requires that each state agency and higher education institution comply with the annual goals established for that agency or institution for public works and procuring goods or services. Each city, county, and unified school district would also be required to adopt a similar small, minority, and women owned business procurement program. The Kansas Small, Minority, and Women-Owned Business Development Program would be responsible for investigating complaints of violations and would be required to notify the Governor and Legislative Division of Post Audit of all agencies and institutions not in compliance.

The bill prohibits anyone from preventing or interfering with a contractor's or subcontractor's compliance with the bill or any regulation. The bill prohibits the submission of any false or fraudulent information to the director, and prohibits anyone from fraudulently obtaining or attempting to obtain certification. The bill also prohibits anyone from knowingly making a false statement, knowingly obstructing an investigation, fraudulently obtaining or attempting to obtain public monies to which the person is not entitled, or knowingly making any false statement or representation that any organization is or is not certified. The penalties for violating the provisions of the bill include withholding payment, banning the contractor, and suspending or terminating the contract. The bill provides that a willful repeated violation may disqualify the contractor for a period of up to three years.

Estimated State Fiscal Effect				
	FY 2012 SGF	FY 2012 All Funds	FY 2013 SGF	FY 2013 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$418,036	\$418,036
FTE Pos.	--	--	--	7.00

The Department of Commerce indicates implementing SB 268 would require \$210,000 from the State General Fund in FY 2013 for the salaries and wages and operational expenses for 3.00 new FTE positions to manage this new program.

The Kansas Department of Transportation (KDOT) indicates that it currently certifies Disadvantaged Business Enterprises based on the Federal Highway Administration regulations and that this bill would create a new and separate certification process. The bill would require KDOT to be the only authority to perform certifications of minority business enterprises, women business enterprises, and socially and economically disadvantaged enterprises throughout the State of Kansas. The agency would be responsible for certifying businesses participating in programs for other state agencies and local governments. The agency indicates that the bill cannot be implemented within the currently approved staffing and operating expenditures. According to KDOT, creating and managing this new certification process would require \$208,036 from the State General Fund in FY 2013 for the salaries and wages and operational expenses for 4.00 new FTE positions.

State agencies, postsecondary educational institutions, and participating local governments would be required to comply with the annual goals for participation by qualified small, minority, and

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women-owned and controlled businesses for public works and procurement contracts. The bill has the potential to increase the costs for goods and services purchased by state agencies, postsecondary educational institutions, and participating local governments if a bidder from a small, minority, and women-owned and controlled business were required to be selected over a lower cost bidder; however, no precise fiscal effect can be estimated. The bill has the potential to provide additional opportunities for Kansas small, minority, and women-owned businesses to participate in public works and other procurement contracts. Any fiscal effect associated with SB 268 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

Steven J. Anderson, CPA, MBA

Director of the Budget

cc: Jason Glasrud, Commerce
Ben Cleeves, Transportation
Dale Dennis, Education
Larry Baer, League of Kansas Municipalities
Melissa Wangemann, Kansas Association of Counties