

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **HB 2675**, as amended by House Committee, on page 6, following line 13, by inserting:

"New Sec. 3. (a) Sections 3 through 8, and amendments thereto, shall be known and may be cited as the taxpayer empowerment, accountability and transparency in state contracting act.

(b) As used in sections 3 through 8, and amendments thereto, unless the context clearly requires otherwise:

(1) "Agency" means any state agency, authority or any political subdivision of state or local government, including, but not limited to, county, city, township, village or municipal government, local school districts, institutions of higher education, any state-supported institution or a joint agency composed of political subdivisions.

(2) "Privatization" means a contract or a lease between an agency and a person or firm, regardless of whether the person or firm is a for-profit entity or a not-for-profit entity, for any function, operation or service performed by personnel employed by an agency on July 1, 2014, or the termination of a state-provided function, operation or service where the practical impact is that such function, operation or service will be performed by another entity.

New Sec. 4. (a) The division of purchases of the department of administration shall establish and maintain an online database that is accessible, searchable, sortable and downloadable. The database shall include the following:

- (1) A description of the contract for services being purchased;
- (2) the name of the agency, department or division contracting for the service;

- (3) the name of the contractor and any and all subcontractors;
- (4) effective and expiration dates of the contract;
- (5) the annual amount paid to the contractor in the past fiscal years and the current fiscal year under the contract by funding source;
- (6) the annual amount proposed to be paid to the contractor in the fiscal years beyond the approved budget;
- (7) the total projected cost of the contract for all fiscal years by funding source; and
- (8) a list of private contractor employees for each contract, reflected as full-time equivalent positions, their hourly wage rate and the number of private contractor employees and consultants for the current and previous fiscal years.

(b) The information described in subsection (a) shall be compiled in an annual service contractor expenditure budget accompanying the governor's budget, detailing total spending on total service contracts for the state.

(c) Each service contract in excess of \$25,000 between an agency and a person or firm for the performance of a governmental function shall:

- (1) Provide that the agency is entitled to receive a copy of records and files related to the performance of the governmental function; and
- (2) indicate that such records and files are subject to the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, and shall be disclosed by the agency.

(d) Any contractor doing business with an agency shall:

- (1) Keep and maintain the public records that ordinarily and necessarily would be kept and maintained by the agency in order to perform the service or activity;
- (2) provide the agency with access to such public records on the same terms and conditions and at a cost that does not exceed costs as defined in K.S.A. 45-222, and amendments thereto, or as

otherwise provided by law; and

(3) abide by the provisions of the Kansas open meetings act, K.S.A. 75-4317 et seq., and amendments thereto, ensuring that any and all meetings between the private contractor and officials acting on behalf of the jurisdiction are open to the public.

New Sec. 5. (a) Before any contract is finalized, the contracting agency shall prepare a request to the governing body for an appropriation and any authority that is necessary for the contracting agency to hire personnel and obtain resources necessary to oversee and monitor performance of service contracts and enforce other conditions required by law. No procurement for such contract shall proceed unless the necessary appropriation and authority have been granted.

(b) If the contracting agency procures services, the contracting agency shall:

(1) Keep a record of the cost analysis and findings that the contracting agency makes for each procurement the agency conducts, along with the basis for the decision to proceed with the procurement;

(2) properly ensure that the contractor is providing services as required by the contract within the costs as established by the contract;

(3) enforce performance standards established by the contract;

(4) collect and provide copies of the records required by law; and

(5) ensure that any and all aspects of the contract are properly enforced.

(c) Any service contract shall incorporate specific performance criteria and cost parameters, and the contractor shall submit quarterly reports to the secretary of administration on the contractor's compliance with the performance criteria and actual costs incurred. The service contract may be cancelled if the contractor fails to comply with the performance criteria and other requirements set out in the contract and if annual costs exceed those established by the contract. The contract may be cancelled at any time if the contractor fails to comply with all applicable local, state and federal laws,

rules and regulations and statutes.

(d) Any private entity that has a contract with the state of Kansas can have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal, state or local statute or rules and regulations, including payment of taxes or other payments owed to a public entity. Prior to awarding a contract, bidders are required to submit documentation to the secretary of administration, signed by the bidder under penalty of perjury, attesting to compliance with all applicable local, state and federal laws, including health and safety, labor and employment and licensing laws, that affect the employees, worksite or performance of the contract. All bidders and contractors shall complete a pledge of compliance provided by the secretary of administration attesting under penalty of perjury to comply with all applicable laws, rules and regulations and statutes.

New Sec. 6. (a) Prior to entering into a private service contract, the secretary of administration shall make public a cost comparison. No agency may enter a private service contract, unless the proposed contract is projected to result in overall cost savings to the state of at least 10% less than the projected cost of having the services provided by public employees. Contract costs shall include direct costs, including salaries and fringe benefits, indirect overhead costs, including the contractor's proportional share of existing administrative salaries and benefits, rent and equipment costs, utilities and materials. Additionally, transition costs, including unemployment compensation, shall be included in the analysis of contractor costs.

(b) Projected cost savings may not derive from a bidder's failure to provide health and retirement benefits and adequate wages to its employees. Contractors are required to pay wages comparable to step one of current wages for public employees performing similar work or the average private sector wage, whichever is less. In addition, contractors must pay no less than the current percentage for health benefits comparable to those offered current public employees or a wage differential sufficient to cover the cost of the health benefits. The wages and benefits must be included

in any bid and actual wages and benefits shall be reported to the contracting agency on a quarterly basis. This information shall be public record, and itemized per employee of the contractor.

New Sec. 7. (a) Prior to entering into a private contract for public services, the secretary of administration or agency designee shall produce a thorough analysis of the possible impacts of the private contract. The analysis shall include, but is not limited to, the following:

- (1) Possible loss of employment or income in a local area;
- (2) impacts on social services in the local area;
- (3) impacts on public assistance programs;
- (4) economic impact on local businesses;
- (5) any possible loss or increase in tax revenue for the local area; and
- (6) any environmental impacts that may result from the private contract, including any upgrades or possible degradation.

(b) This report detailing the analysis conducted pursuant to subsection (a) shall be made public and posted on the department of administration public website. The contracting agency shall conduct public meetings in order for all citizens to have an opportunity to address concerns and obtain information.

(c) No contract shall be automatically renewed without utilizing the competitive bidding process. Any in-house bids submitted shall be considered. If an in-house bid or proposal meets the cost and performance criteria specified in the law or the request for proposal, it shall be deemed the most qualified bid.

(d) No agency may enter into a contract that guarantees payment for services not provided. Service or asset contracts shall not unduly restrict the government from taking actions in the public interest and shall not unfairly place the burden of risk on taxpayers.

(e) No contracts shall:

(1) Provide for guaranteed occupancy rates for private prisons, dormitories or any other contracted facility;

(2) prohibit a government entity from maintaining, improving or building public infrastructure; and

(3) penalize a jurisdiction if a contractor loses revenue as a result of natural or man-made emergencies, such as acts of terrorism or acts of mother nature.

(f) Any increases in fees or charges for public services shall be submitted to the governing body of the jurisdiction for approval. The decision to approve or disallow increases shall be made in a public manner, subject to the requirements of the Kansas open meetings act.

New Sec. 8. Prior to outsourcing any work, both the in-house and proposed contractors' costs and scope of work shall be estimated by the head of the agency and provided to affected bargaining representatives, along with all source information on all cost estimates. The bargaining representative shall be provided a full and fair opportunity to present its own cost estimates and recommendations for the new work processes. Such estimates and recommendations shall be given full consideration. ";

And by renumbering remaining sections accordingly;

On page 1, in the title, in line 2, after the second semicolon by inserting "creating the taxpayer empowerment, accountability and transparency in state contracting act;"

_____ District.