

March 2, 2017

The Honorable John Barker, Chairperson
House Committee on Federal and State Affairs
Statehouse, Room 285-N
Topeka, Kansas 66612

Dear Representative Barker:

SUBJECT: Fiscal Note for HB 2201 by House Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2201 is respectfully submitted to your committee.

HB 2201 would create the Taxpayer Empowerment, Accountability and Transparency in State Contracting Act. The act would require the Office of Procurement and Contracts in the Department of Administration to establish an online database that includes the following information:

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 past fiscal years and the current fiscal year under the contract and 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's 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 years.

Information from the database would be compiled in an annual service contractor expenditure budget that would accompany the *Governor's Budget Report*. Contracts greater than \$25,000 would be required to contain provisions allowing agencies to receive copies of records related to the performance of governmental functions and indicating that the records are subject to the Kansas Open Records Act.

Under the bill, “agencies” would be defined to mean any state agency, authority or any political subdivision of state or local government. Agencies would be required to seek authorization and an appropriation from the agency’s governing body before a contract is finalized. Agencies would be required to keep records of the cost analysis for all procurements and ensure contractors are providing services as required by the contract and within established costs. All service contracts must incorporate specific performance criteria and cost parameters. Contractors would be required to submit quarterly reports to the Department of Administration regarding the contractor’s compliance with the performance criteria and actual costs incurred.

Agencies would be prohibited from entering into a private service contract unless the proposed contract is projected to result in overall cost savings to the state of at least 10.0 percent less than the projected cost of having the services provided by public employees. The Department of Administration would be required to compile and post on its website a report containing a thorough analysis of the possible impacts of each private contract. The Department would be required to make all cost comparisons public before entering into private contracts.

Agencies would be required to hold public meetings to allow citizens to address any concerns. Contracts could not be automatically renewed without using the competitive bidding process. Prior to outsourcing any work, agencies would estimate both the in-house and proposed contractors’ costs and the scope of work and provide those estimates to affected bargaining representatives. The bill would require bargaining representatives be provided full and fair opportunity to present its own cost estimates and recommendations.

The Department of Administration states that it is not the central repository of contracts for all agencies as defined in the bill and does not handle contracts for local governments, the Board of Regents and the Department of Transportation. The Department of Administration estimates that the bill would require the Office of Procurement and Contracts to obtain and upload contract information for over 1,000 governmental entities in addition to state agencies. It is estimated this would require additional expenditures of \$271,320 from the State General Fund and 5.00 FTE positions for FY 2018. The cost would include \$210,000 for salaries and wages for the new positions; \$15,000 for one-time work station setup; \$3,000 for communication and office supplies; and \$43,320 for additional office space. For FY 2019, expenditures of \$256,320 would be needed from the State General Fund, which excludes the office setup costs. Additionally, the Department indicates that the state’s financial management system (SMART) does not have the capability to receive contract information from entities that are not state agencies. A new system would need to be developed at an estimated cost of \$2.5 million to \$3.5

million. The Department is unable to estimate the number of contracts that would need to be obtained from agencies to carry out the bill's provisions.

The Department for Children and Families estimates the bill would require additional expenditures of \$375,002 in FY 2018 for salaries and wages and associated costs for 5.00 FTE positions. Of this total amount, \$212,964 would be from the State General Fund and \$162,038 from federal funds. For FY 2019, it is estimate that \$372,881 would be needed, including \$211,759 from the State General Fund and \$161,122 from federal funds. The Department notes the agency has numerous contracts and the bill would require additional work for each contract.

The Department for Health and Environment estimates it would require additional expenditures of \$239,250 from the State General Fund and 3.00 FTE positions in FY 2018. Of the total amount, \$228,900 would be for salaries and wages; \$4,500 would be for IT purchases; \$5,100 would be for office furniture; and \$750 for office supplies. For FY 2019, expenditures of \$229,687 would be needed, including ongoing costs of \$228,900 for the 3.00 FTE positions and \$787 for office supplies.

The Department of Education indicates the bill would have a fiscal effect on the agency and school districts. However, the Department states it would need clarification on the bill's provisions in order to provide an accurate estimate. The agency believes clarification is needed regarding the definition of "privatization;" whether or not all contracts by school districts would be subject to the requirements of the bill or only those that bid through the Department of Administration; what is meant by the term "appropriation" as it is used in the bill; the administrative process of performing cost analysis for each contract; the requirement that contractors pay wages and health benefits comparable to public employees performing similar work; and whether the Department of Administration or the contracting agency would perform the analysis of the social, economic and environmental impact of each contract.

The Board of Regents states the bill would have a fiscal effect on state universities, Washburn University, community colleges and technical colleges but the fiscal effect cannot be estimated. Additional staff time would be needed to manage and report on contracts. Regents institutions would experience delays in the contracting process, impeding their ability to outsource services.

If the provision of the bill requiring agencies to obtain approval for an appropriation before procuring services is interpreted to mean state agencies must obtain appropriation approval from the Legislature prior to issuing contracts, the Department of Corrections indicates the bill would freeze all purchasing activities outside of the Legislative Session. This would delay repairs at correctional facilities, hinder any necessary amendments to the food and health care contracts, and impair the ability of the Department to obtain contract beds for inmates.

The Department of Transportation indicates that the bill could require the agency to hire additional FTE positions to provide information on potentially hundreds of contracts and assist with performing contract cost comparisons and analysis. Any increase in expenditures would

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come from the State Highway Fund. However, the Department is unable to determine the dollar effect from the bill because it does not have sufficient information to make an estimate.

Local governments would incur additional expenditures from an increase in staff time and costs relating to documenting, reporting, and analyzing all city and county contracts. However the League of Kansas Municipalities and the Kansas Association of Counties are unable to estimate the fiscal effect for local governments. Any fiscal effect associated with HB 2201 is not reflected in *The FY 2018 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a long horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Linda Kelly, Corrections
Dale Dennis, Education
Jackie Aubert, Children & Families
Kelly Oliver, Board of Regents
Justin Law, Agriculture
Ben Cleeves, Transportation
Dan Thimmesch, Health & Environment
Lynn Robinson, Department of Revenue
Colleen Becker, Department of Administration
Brock Ingmire, League of Municipalities
Melissa Wangemann, Association of Counties