

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2515**

As Amended by House Committee of the Whole

**Brief\***

HB 2515 , as amended, would establish the Competitive Bid Protection Act. When contracting for public works construction, governmental entities would not be able to require bidders, contractors, subcontractors, or material suppliers to enter into any kind of project labor agreement with a labor organization. Governmental entities would be prohibited from discriminating based upon the presence or absence of a project labor agreement. Any agent responsible for procuring a contract directly between the governmental entity and contractor also would be prohibited. The bill would not prohibit bidders, construction managers, contractors, design-builders, subcontractors, or material suppliers from voluntarily entering into a project labor agreement. Contractors, design-builders, or construction managers could require subcontractors or material suppliers to enter into a collection bargaining agreement

Governmental entities would include municipalities and state agencies as defined by KSA 12-105a and KSA 75-3728a, respectively. The bill would not supersede other provisions of state law or the National Labor Relations Act (29 U.S.C. § 151 to 169, inclusive) which may allow or protect project labor agreements.

**Background**

Proponents to the bill included various associations of building and constructions contractors, the National

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Federation of Independent Business, and the Kansas Chamber. Proponents indicated the bill would ensure that contracts are awarded on a fair and competitive basis. Proponents contend project labor agreements increase construction costs, circumvent the state's right-to-work policy, and discriminate against women and minority-owned businesses.

Opponents included various labor organizations, builder and contractor associations, the Kansas Chapter of the American Institute of Architects (AIA Kansas), the Board of Regents, and the Division of Design Management at the University of Kansas. Opponents questioned the need for the legislation since most, if not all, examples cited by proponents were in other states. Opponents also questioned the bill's application. Contractors and construction managers could be disqualified from bidding on public works projects because they are signatory to collective bargaining agreements that contain subcontract restrictions.

AIA Kansas, the Board of Regents, and the Design Management Division opposed section 4 of the bill, as introduced, which would have required all contracts valued at \$100,000 or more to be bid through the Department of Administration. These opponents contended the bill was inconsistent with the State Educational Institutions Project Delivery Construction Procurement Act which streamlined the process to bid non-state funded projects.

The House Committee on Commerce and Economic Development amended the bill to:

- Include agents for governmental entities in the prohibition on requiring project labor agreements and discrimination;
- Include construction manager and design builder in the list of private entities that may voluntarily enter into a project labor agreement;

- Delete section 4 of the bill, as introduced, which would have required all contracts valued at \$100,000 or greater to be bid through the Department of Administration; and
- Make uniform use of the term "governmental entity" throughout the bill.

The House Committee of the Whole amended the bill to:

- Revise the bill's purpose to include "governmental entities;"
- Clarify that the prohibition found in section 3 applies a governmental entity's agents who are responsible for procuring a contract; and
- Make uniform reference to the term "governmental entity."

According to the fiscal note prepared by the Division of the Budget, the introduced bill could increase the volume of projects subject for review and approval by the agency. Costs associated for this process would be passed on to the state agency in the form of a fee. However, the Department is unable to provide a precise estimate of the amount of additional fees associated with the bill. The Kansas Department of Transportation indicates any fiscal effect resulting from the passage of the original bill would be negligible. The Board of Regents indicates the original bill would negate between 1.0 percent and 3.0 percent savings in construction inflation. The Kansas Association of Counties and the League of Kansas Municipalities estimate that any fiscal effect resulting from the bill would be negligible to local governments.