

March 12, 2013

The Honorable Marvin Kleeb, Chairperson
House Committee on Commerce, Labor and Economic Development
Statehouse, Room 286-N
Topeka, Kansas 66612

Dear Representative Kleeb:

SUBJECT: Fiscal Note for HB 2279 by Representative Davis, et al.

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2279 is respectfully submitted to your committee.

HB 2279 would create the Kansas Buy American Act. The Act would require that each contract for the purchase, construction, reconstruction, alternation, repair, improvement, or maintenance of a public building or a public work made by a state agency would contain a provision that the iron, steel, and manufactured goods used or supplied in the performance of the contract or any subcontract related would have to be manufactured in the United States.

The bill would allow the following exceptions:

1. The domestic materials would “be inconsistent with the public interest;”
2. Materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. The inclusion of domestic material would increase the cost of the overall project by more than 25.0 percent.

If a state agency head receives a request for a waiver for one of the three listed exceptions, the Secretary of Administration would provide notice and an opportunity for public comment on the request at least 30 days before making a finding based on the request of the state agency head. The notice would include the information made available to the Secretary concerning the request, including which exception the request is being made for and the notice would be provided to the public by publishing the notice and the information made available to the Secretary on the Internet website of the state agency. If the Secretary issues a waiver, the Secretary would publish in the *Kansas Register* a detailed justification for the waiver that

addresses the public comments received and bill would require this information be published before the waiver would take effect.

HB 2279 would prohibit a person from intentionally affixing a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any iron, steel, or manufactured good used in projects to which the Act applies, sold in or shipped to Kansas that was not made in the United States. Further, the bill would prohibit an individual from representing that any iron, steel, or manufactured good used in projects, to which the Act applies, was produced in the United States, when, in fact, the good was not produced in the United States. If it is determined by a court or the Secretary that any person has violated the Act, the person would be ineligible to receive any contract or subcontract with the State of Kansas pursuant to the debarment or suspension provisions provided in current law. The bill would require state agencies to give preference to goods that are manufactured in Kansas when possible.

The Board of Regents states enactment of HB 2279 would create additional costs for state universities; however, the Board cannot determine the exact fiscal effect of the bill. HB 2279 refers to “overall project contract.” The Board indicates it is not clear whether that is project cost or construction cost. For the purpose of this fiscal note, the Board assumes construction costs. According to the Board, typically 50.0 percent of the construction cost is in materials. Based on a survey conducted of state universities, the Board estimates that the material costs for buy American would increase 15.0 percent to 20.0 percent. Assuming a 20.0 percent increase in material costs, that would increase total construction costs by approximately 10.0 percent, according to the Board. The general contractor includes in their price a “general conditions” cost that typically is 5.0 percent to 8.0 percent of the contract award amount. Based on recent projects funded by the American Recovery and Reinvestment Act (ARRA) at the state universities, the Board anticipates there would be an increase in the contractor administrative costs between .25 percent and .50 percent added to the general conditions. Also, based on recent ARRA funded projects, the Board states that consultant fees would see additional administrative tasks and that their fees may increase between .25 percent and .50 percent. The Board indicates state universities would be checking to make sure the contractor and consultant have their documentation in compliance with the provisions in HB 2279.

The Kansas Department of Transportation states the buy American requirement in the bill could increase the costs of the agency’s contracts with the 25.0 percent clause, especially as it relates to sub-contractors that do not follow the buy American requirements. The Department of Administration states it would need \$45,000 from the State General Fund in FY 2014 and for future fiscal years for an additional 1.00 Procurement Officer I FTE position to assist the Secretary of Administration in researching claims and waiver requests and monitoring contracts to ensure that they are in compliance with the provisions of HB 2279. The Department also indicates it would need \$1,500 from the State General Fund for FY 2014 for office equipment, including a cubicle and computer. The Office of Judicial Administration states that enactment of HB 2279 could have a long-term fiscal effect on the Judicial Branch; however, the agency cannot provide an accurate fiscal effect estimate until the courts have been given an opportunity to

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operate under the provisions outlined in the bill. Any fiscal effect associated with HB 2279 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Pam Fink, Administration
Ben Cleeves, Transportation
Kelly Oliver, Board of Regents
Dawn Palmberg, Department of Labor
Steve Neske, Revenue
Dan Lara, Commerce
Mary Rinehart, Judiciary