

Journal of the House

SEVENTIETH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, May 16, 2012, 11:00 a.m.

The House met pursuant to adjournment with Speaker O'Neal in the chair.

The roll was called with 117 members present.

Rep. LeDoux was excused on verified illness.

Rep. Pauls was excused on legislative business.

Reps. Collins, Donohoe, Fawcett, McCray-Miller, Roth and Weber were excused on excused absence by the Speaker.

Reps. Hill and Seiwert were excused later in the day on excused absence by the Speaker.

Present later: Rep. Fawcett.

Prayer by guest chaplain, the Rev. Jim Peters, pastor, Our Savior's Lutheran Church, Topeka:

God of life,

We thank you for giving us this new day of life, and all the opportunities and the challenges that this day will bring. Whatever may happen, whatever we may have to face, we pray for your presence to be felt here among us. Give us the strength and the help we need and give us ample reason to rejoice in your abundant goodness. Please bless the work of our representatives this day and guide them in the decisions they make. Look upon us all with love and favor. We praise you, O God, for all your works truly are wonderful. We especially remember Rep. Melody McCray-Miller's father and we ask you to hold him and keep him close to your heart this day. And we ask for all of these things in your gracious name. Amen.

The Pledge of Allegiance was led by Rep. B. Wolf.

MESSAGE FROM THE GOVERNOR

S Sub for Sub HB 2004; S Sub for S Sub for HB 2249; HB 2534, HB 2562, HB 2684 approved on May 16, 2012.

MESSAGE FROM THE SENATE

The Senate adopts the Conference Committee report on **H Sub for SB 287**.

The Senate adopts the Conference Committee report on **SB 306**.

The Senate adopts the Conference Committee report on **S Sub for HB 2597**.

The Senate not adopts the Conference Committee report on **Sub SB 307**, requests a conference and appoints Senators Owens, King and Haley as second conferees on the part of the Senate.

The Senate not adopts the Conference Committee report on **H Sub for SB 425**, requests a conference and appoints Senators Owens, King and Haley as second conferees on the part of the Senate.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2157** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 8 through 36;

By striking all on pages 2 through 12 and inserting:

"New Section 1. Sections 1 through 5, and amendments thereto, shall be known and may be cited as the competitive bid protection act.

New Sec. 2. The purposes of the competitive bid protection act are to: (a) Provide for the efficient procurement of goods and services by governmental entities;

(b) promote the economical, nondiscriminatory and efficient administration and completion of state and state-funded or state-assisted construction projects by governmental entities;

(c) provide for fair and open competition for construction contracts, awarded by governmental entities;

(d) prohibit requirements for certain terms in construction contracts awarded by governmental entities;

(e) prohibit the expenditure of public funds under certain conditions;

(f) prohibit certain terms in procurement documents by governmental entities for public facilities; and

(g) provide powers and duties for certain public officers, employees and contractors.

New Sec. 3. (a) Unless otherwise required by law, each governmental entity within this state that contracts for public works construction shall ensure that neither the awarding governmental entity nor any agent responsible for procuring a contract directly between the governmental entity and a contractor shall not:

(1) Require any bidder, contractor, subcontractor or material supplier to enter into or agree to enter into any prehire agreement, project labor agreement, collective bargaining agreement or any other similar agreement with one or more labor organizations on the same or other related construction projects; or

(2) discriminate against or treat differently any bidder, contractor, subcontractor or material supplier for becoming, refusing to become or remaining signatories or otherwise to agree to enter into any prehire agreement, project labor agreement,

collective bargaining agreement or any other similar agreement with one or more labor organizations on the same or other related construction projects.

(b) Nothing in this section shall prohibit:

(1) Any bidder, contractor, subcontractor, construction manager, design-builder or material supplier of any tier from voluntarily entering into agreements described in paragraph (1) of subsection (a); or

(2) any contractor, construction manager or design builder from requiring its subcontractors or material suppliers of any tier to enter into a collective bargaining agreement.

New Sec. 4. No provision of this act shall be construed to:

(a) Prohibit any employer or other party from entering into any agreement or engaging in any other activity protected by the national labor relations act, 29 U.S.C. §§ 151 to 169; and

(b) interfere with labor relations of any party that is protected under the national labor relations act, 29 U.S.C. §§ 151 to 169.

New Sec. 5. For the purposes of this act:

(a) "Governmental entity" means a state agency or a municipality as the context requires.

(b) "Municipality" means the same as specified in K.S.A. 12-105a, and amendments thereto.

(c) "State agency" means the same as specified in K.S.A. 75-3728a, and amendments thereto.

Sec. 6. K.S.A. 2011 Supp. 75-3740 is hereby amended to read as follows: 75-3740.

(a) Except as provided by K.S.A. 75-3740b, and amendments thereto, and subsection (g), all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids.

(b) The director of purchases shall have power to decide as to the lowest responsible bidder for all purchases, but if:

(1) The dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state; and

(2) in the case of bids for paper products specified in K.S.A. 75-3740b, and amendments thereto, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recycled materials.

(c) Any or all bids may be rejected, and a bid shall be rejected if it contains any material alteration or erasure made after the bid is opened. The director of purchases may reject the bid of any bidder who is in arrears on taxes due the state, who is not properly registered to collect and remit taxes due the state or who has failed to perform satisfactorily on a previous contract with the state. The secretary of revenue is hereby authorized to exchange such information with the director of purchases as is necessary to effectuate the preceding sentence notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information. Prior to determining the lowest responsible bidder on contracts for construction of buildings or

for major repairs or improvements to buildings for state agencies, the director of purchases shall consider: (1) The criteria and information developed by the secretary of administration, with the advice of the state building advisory commission to rate contractors on the basis of their performance under similar contracts with the state, local governmental entities and private entities, in addition to other criteria and information available; and (2) the recommendations of the project architect, or, if there is no project architect, the recommendations of the secretary of administration or the agency architect for the project as provided in K.S.A. 75-1254, and amendments thereto. In any case where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance, unless otherwise expressly provided by law or the state agency elects not to proceed with the procurement.

(d) Before the awarding of any contract for construction of a building or the making of repairs or improvements upon any building for a state agency, the director of purchases shall receive written approval from the state agency for which the building construction project has been approved, that the bids generally conform with the plans and specifications prepared by the project architect, by the secretary of administration or by the agency architect for the project, as the case may be, so as to avoid error and mistake on the part of the contractors. In all cases where material described in a contract can be obtained from any state institution, the director of purchases shall exclude the same from the contract.

(e) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the director of purchases for five years, unless reproduced as provided in K.S.A. 75-3737, and amendments thereto, and shall be open to public inspection at all reasonable times.

(f) As used in this section and in K.S.A. 75-3741, and amendments thereto, "project architect" shall have the meaning ascribed thereto in K.S.A. 75-1251, and amendments thereto.

(g) When a state agency is receiving bids to purchase passenger motor vehicles, such agency shall follow the procedures prescribed in subsection (b)(1), except in the case where one of the responsible bidders offers motor vehicles which are assembled in Kansas. In such a case, 3% of the bid of the responsible bidder which offers motor vehicles assembled in Kansas shall be subtracted from the bid amount, and that amount shall be used to determine the lowest bid pursuant to subsection (b)(1). This subsection shall only apply to bids which match the exact motor vehicle specifications of the agency purchasing passenger motor vehicles.

Sec. 7. K.S.A. 2011 Supp. 75-3740 is hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.":

On page 1, in the title, in line 1, by striking all after "ACT"; by striking all in lines 2 through 5, and inserting "concerning competitive bidding; relating to purchase of motor vehicles by state agencies; enacting the competitive bid protection act; amending K.S.A. 2011 Supp. 75-3740 and repealing the existing section.":

And your committee on conference recommends the adoption of this report.

LES DONOVAN

PAT APPLE

Conferees on part of Senate

RICHARD CARLSON

MARVIN KLEEB

Conferees on part of House

On motion of Rep. Carlson to adopt the conference committee report on **S Sub for HB 2157**, Rep. Brown offered a substitute motion to not adopt the conference committee report and asked that a new conference committee be appointed. The substitute motion prevailed.

Speaker O'Neal thereupon appointed Reps. Carlson, Kleeb and Dillmore as third conferees on the part of the House.

On motion of Rep. Siegfried, the House recessed until 4:00 p.m.

LATE AFTERNOON SESSION

The House met pursuant to recess with Speaker O'Neal in the chair.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Siegfried, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **SB 250**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 250** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows: on page 1, by striking all in lines 6 through 32;

By striking all in pages 2 through 5;

On page 6, by striking all in line 1 and inserting:

"Section 1. (a) (1) Except as provided in paragraphs (2) and (3), whenever a municipality provides for the payment of premiums for any health benefit plan for its firefighters, it shall pay premiums for the continuation of coverage under COBRA for the surviving spouse and dependent children of a firefighter who dies in the line of duty. Premiums for continuation of coverage under COBRA shall be paid for 18 months.

(2) A municipality may not be required to pay the premiums described in paragraph (1) for a surviving spouse:

(A) On or after the end of the 18th calendar month after the date of death of the deceased firefighter;

(B) upon the remarriage of the deceased firefighter's surviving spouse; or

(C) upon the deceased firefighter's surviving spouse reaching the age of 65.

(3) An individual is not a dependent child of a deceased firefighter for the purposes of paragraph (1) after such individual reaches the age of 18 years unless such individual

is a:

(A) Full-time student in an accredited high school; or
 (B) full-time student in a postsecondary educational institution, except that this subparagraph shall not apply to such an individual after the close of the calendar year in which the individual reaches the age of 24 as long as such individual continues to maintain such status as a full-time student.

(b) For the purposes of this section:

(1) "Firefighter" means an actual member of an organized fire department, of a municipality, whether regular or volunteer.

(2) "Health benefit plan" shall have the meaning ascribed to it in K.S.A. 40-4602, and amendments thereto.

(3) "Municipality" means city, county or township.

(4) "Postsecondary educational institution" shall have the meaning ascribed to it in K.S.A. 74-3201b, and amendments thereto.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.";

On page 1, in line 1, in the title, by striking all after "ACT"; by striking all in line 2; in line 3, by striking all before the period and inserting "pertaining to the continuation of health insurance for firefighters";

And your committee on conference recommends the adoption of this report.

CLARK SHULTZ
 PHIL HERMANSON
 BOB GRANT

Conferees on part of House

RUTH TEICHMAN
 TY MASTERSON
 ALLEN C. SCHMIDT

Conferees on part of Senate

On motion of Rep. Shultz, the conference committee report on **SB 250** was adopted.

On roll call, the vote was: Yeas 87; Nays 23; Present but not voting: 0; Absent or not voting: 15.

Yeas: Alford, Aurand, Ballard, Billinger, Bowers, Brookens, Bruchman, Burgess, Burroughs, Calloway, Carlin, Cassidy, Colloton, Crum, Davis, Denning, Dillmore, Fawcett, Feuerborn, Finney, Flaharty, Frownfelter, Garber, D. Gatewood, S. Gatewood, Goico, Gonzalez, Goodman, Grange, Grant, Hayzlett, Henderson, Henry, Hermanson, Hildabrand, Hineman, Hoffman, C. Holmes, Johnson, Kelly, Kerschen, Kiegler, Kuether, Landwehr, Lane, Loganbill, Mah, Mast, Meier, Montgomery, Moxley, O'Brien, Osterman, Otto, Peck, Phelps, Phillips, Pottorff, Powell, Prescott, Proehl, Rhoades, Rubin, Ruiz, Scapa, Schroeder, Schwab, Schwartz, Shultz, Siegfried, Slattery, Sloan, Smith, Spalding, Swanson, Tietze, Trimmer, Tyson, Vickrey, Victors, Ward, Wetta, Williams, Winn, B. Wolf, Wolfe Moore, Worley.

Nays: Arpke, Bethell, Bollier, Boman, Brown, Brunk, DeGraaf, Gordon, Gregory, Grosserode, Hedke, M. Holmes, Howell, Huebert, Kelley, Kinzer, Knox, McLeland, Meigs, O'Hara, Patton, Ryckman, K. Wolf.

Present but not voting: None.

Absent or not voting: Carlson, Collins, Donohoe, Hill, Kleeb, LeDoux, McCray-Miller, Mesa, O'Neal, Pauls, Peterson, Roth, Seiwert, Suellentrop, Weber.

REPORTS OF STANDING COMMITTEES

Committee on **Judiciary** recommends **SB 291** be amended by substituting a new bill to be designated as "HOUSE Substitute for SENATE BILL NO. 291," as follows:

"HOUSE Substitute for SENATE BILL NO. 291

By Committee on Judiciary

"AN ACT concerning the Kansas restraint of trade act; amending K.S.A. 50-101 and 50-112 and repealing the existing sections."; and the substitute bill be passed.

(**Sub SB 291** was thereupon introduced and read by title.)

REPORT ON ENGROSSED BILLS

Sub HB 2689 reported correctly engrossed May 15, 2012.

HB 2503 reported correctly re-engrossed May 15, 2012.

Also, **HB 2704** reported correctly engrossed May 16, 2012.

HB 2413 reported correctly re-engrossed May 16, 2012.

REPORT ON ENGROSSED RESOLUTIONS

HR 6032 reported correctly engrossed May 16, 2012.

REPORT ON ENROLLED BILLS

S Sub for HB 2117 reported correctly enrolled, properly signed and presented to the Governor on May 16, 2012.

On motion of Rep. Siegfried, the House adjourned until 11:00 a.m., Thursday, May 17, 2012.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

