

## HOUSE BILL No. 2264

By Representatives Swenson, Barnes, Dillmore, Flaharty, Gilbert, Kirk, Levinson, Loganbill, Nichols, O'Brien, Peterson, E., Powers, Ruff, Tolkes, Welshimer, and Wilson

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AN ACT concerning employment; ensuring that employees of government contractors are paid a living wage; amending K.S.A. 75-37,103 and K.S.A. 2000 Supp. 75-3739 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) Any employer, other than a not for profit corporation chartered pursuant to section 501(c)(3) of the internal revenue code of 1986, which enters into or seeks to enter into a contract to provide goods or services, with a value in excess of \$25,000 per year, to the state:

(1) Proof to the purchasing government that all of the employer's employees earn a wage of not less than \$9.37 per hour or an equivalent salary based rate of compensation based on a 40-hour work week. The amount of such wages shall be adjusted annually by a percentage equal to the percentage change in the consumer price index. The secretary of human resources shall certify the amount of such wages annually on July 1 of each year;

(2) proof of the existence of a group health care insurance plan providing to its employees benefits not less than those available under the state uninsurable health insurance plan, pursuant to K.S.A. 40-2118, and amendments thereto, and to which its employees contribute not more than 30% of total premium costs; and

(3) proof of an annual leave policy providing not less than 12 days of compensated leave and 10 days of uncompensated leave.

(b) Any employer receiving economic development incentives from the state, including, but not limited to, participation in programs administered all or in part by the department of commerce and housing; receipt of an economic development tax exemption or the proceeds from industrial revenue bonds, shall pay wages and benefits not less than the amount specified in subsection (a).

New Sec. 2. (a) The attorney general or any county or district attorney may bring an action:

(1) To obtain a declaratory judgment that an employer has violated, is violating or is otherwise likely to violate section 1 and amendments

1 thereto;

2 (2) to recover damages on behalf of employees by reason of violations  
3 of this act; and

4 (3) to recover reasonable expenses and investigation fees.

5 (b) In lieu of instigating or continuing an action or proceeding, the  
6 attorney general may accept a consent judgment with respect to any vi-  
7 olation of section 1 and amendments thereto. Such a consent judgment  
8 shall provide for the discontinuance by the employer of pursuing contracts  
9 from the state of Kansas; from the further receipt of economic develop-  
10 ment benefits as described in subsection (c) of section 1 and amendments  
11 thereto; and it may include a stipulation for the payment by such em-  
12 ployer of reasonable expenses and investigation fees incurred by the at-  
13 torney general. The consent judgment also may include a stipulation for  
14 restitution to be made by such employer to employees of wages or ben-  
15 efits owed to employees as a result of a violation of section 1 and amend-  
16 ments thereto and also may include a stipulation for specific performance.  
17 Any consent judgment entered into pursuant to this section shall not be  
18 deemed to admit the violation, unless it does so by its terms. Before any  
19 consent judgment entered into pursuant to this section shall be effective,  
20 it must be approved by the district court and an entry made thereof in  
21 the manner required for making an entry of judgment. Once such ap-  
22 proval is received, any breach of the conditions of such consent judgment  
23 shall be treated as a violation of a court order, and shall be subject to all  
24 the penalties provided by law therefor.

25 (c) In any action brought by the attorney general or the county or  
26 district attorney, the court, without requiring bond of the attorney general  
27 or the county or district attorney, may:

28 (1) Make such orders or judgments as may be necessary to prevent  
29 the receipt of contracts or economic development benefits declared to  
30 be a violation of this act;

31 (2) make such orders or judgments as may be necessary to compen-  
32 sate any employee for damages sustained;

33 (3) issue a temporary restraining order or enjoin any supplier from  
34 engaging in business in this state;

35 (4) award reasonable expenses and investigation fees, civil penalties  
36 and costs; and

37 (5) grant other appropriate relief.

38 (c) The attorney general and any other official or agency in this state  
39 having supervisory authority over an employer shall consult and assist  
40 each other in maintaining compliance with this act. Within the scope of  
41 their authority, they may jointly or separately make investigations, pros-  
42 ecute suits and take other official action they consider appropriate.

43 (d) The county attorney or district attorney may investigate, institute

1 and commence actions under this act in the same manner as provided for  
2 the attorney general. It shall be the duty of the county attorney or district  
3 attorney to lend to the attorney general such assistance as the attorney  
4 general may request in the investigation, commencement and prosecution  
5 of actions pursuant to this act, or the county attorney or district attorney  
6 may institute and prosecute actions hereunder in the same manner as  
7 provided for the attorney general.

8 (e) Whether an employee seeks or is otherwise entitled to damages  
9 or otherwise has an adequate remedy at law or in equity, an employee  
10 aggrieved by an alleged violation of this act may bring an action to:

11 (1) Obtain a declaratory judgment that an employer has violated sec-  
12 tion 1 and amendments thereto; or

13 (2) enjoin or obtain a restraining order against an employer who has  
14 violated, is violating or is likely to violate section 1 and amendments  
15 thereto.

16 (f) An employee who is aggrieved by a violation of this act may  
17 recover:

18 (1) A civil penalty of \$5,000; or

19 (2) monetary damages for wages and benefits owed, whichever is  
20 greater.

21 (g) An action for lost wages or benefits may be brought as a class  
22 action, but an action seeking civil penalties only may not be brought as a  
23 class action.

24 (h) Such class action may be instituted for:

25 (1) Violating any of the provisions of section 1 and amendments  
26 thereto; or

27 (2) with respect to an employer who agreed to it, was prohibited  
28 specifically by the terms of a consent judgment which became final before  
29 the complaints on which the action is based.

30 (i) Except for services performed by the office of the attorney general  
31 or the office of a county or district attorney, the court may award to the  
32 prevailing party reasonable attorney fees, including those on appeal, lim-  
33 ited to the work reasonably performed if:

34 (1) The employee complaining of the alleged violation brought or  
35 maintained an action the employee knew to be groundless and the pre-  
36 vailing party is the employer; or an employer has violated this act and the  
37 prevailing party is the employee; and

38 (2) an action under this section has been terminated by a judgment  
39 or settled.

40 (j) Except for consent judgments, a final judgment in favor of the  
41 attorney general under this section is admissible as prima facie evidence  
42 of the facts on which it is based in later proceedings under this section  
43 against the same employer or an employer in privity.

1 (k) Notice of an action commenced pursuant to subsection (b) or (c),  
2 or an appeal of such action, shall be given to the attorney general, but  
3 failure to do so shall not provide a defendant a defense in such action.

4 Sec. 3. K.S.A. 2000 Supp. 75-3739 is hereby amended to read as  
5 follows: 75-3739. In the manner as provided in this act and rules and  
6 regulations established thereunder:

7 (a) All contracts for construction and repairs, and all purchases of and  
8 contracts for supplies, materials, equipment and contractual services to  
9 be acquired for state agencies shall be based on competitive bids, except  
10 that competitive bids need not be required in the following instances:

11 (1) For contractual services, supplies, materials, or equipment when,  
12 in the judgment of the director of purchases, no competition exists;

13 (2) when, in the judgment of the director of purchases, chemicals  
14 and other material or equipment for use in laboratories or experimental  
15 studies by state agencies are best purchased without competition, or  
16 where rates are fixed by law or ordinance;

17 (3) when, in the judgment of the director of purchases, an agency  
18 emergency requires immediate delivery of supplies, materials or equip-  
19 ment, or immediate performance of services;

20 (4) when any statute authorizes another procedure or provides an  
21 exemption from the provisions of this section;

22 (5) when compatibility with existing contractual services, supplies,  
23 materials or equipment is the overriding consideration;

24 (6) when a used item becomes available and is subject to immediate  
25 sale; or

26 (7) when, in the judgment of the director of purchases and the head  
27 of the acquiring state agency, not seeking competitive bids is in the best  
28 interest of the state.

29 When the director of purchases approves a purchase of or contract for  
30 supplies, materials, equipment, or contractual services in any instance  
31 specified in this subsection, the director may delegate authority to make  
32 the purchase or enter the contract under conditions and procedures pre-  
33 scribed by the director.

34 The director of purchases shall prepare a detailed report at least once  
35 in each calendar quarter of all contracts over \$5,000 entered into without  
36 competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The  
37 director shall submit the report to the legislative coordinating council, the  
38 chairperson of the committee on ways and means of the senate, the chair-  
39 person of the committee on appropriations of the house of representatives  
40 and the chairperson of the Kansas performance review board.

41 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,  
42 sealed bids shall be solicited by notice published once in the Kansas reg-  
43 ister not less than 10 days before the date stated in the notice for the

1 opening of the bids. The director of purchases may waive this publication  
2 of notice requirement when the director determines that a more timely  
3 procurement is in the best interest of the state. The director of purchases  
4 also may designate a trade journal for the publication. The director of  
5 purchases also shall solicit such bids by sending notices by mail to pro-  
6 spective bidders and by posting the notice on a public bulletin board for  
7 at least 10 business days before the date stated in the notice for the  
8 opening of the bids unless otherwise provided by law. All bids shall be  
9 sealed when received and shall be opened in public at the hour stated in  
10 the notice.

11 (2) The director of purchases shall prepare a detailed report at least  
12 once in each calendar quarter of all instances in which the director waived  
13 publication of the notice of bid solicitations in the Kansas register as  
14 provided in this subsection. The director shall submit the report to the  
15 legislative coordinating council, the chairperson of the committee on ways  
16 and means of the senate, the chairperson of the committee on appropri-  
17 ations of the house of representatives and the chairperson of the Kansas  
18 performance review board.

19 (c) All purchases estimated to exceed approximately \$25,000 but not  
20 more than \$50,000, shall be made after receipt of sealed bids following  
21 at least three days' notice posted on a public bulletin board.

22 (d) All purchases estimated to be more than \$5,000, but less than  
23 \$25,000, may be made after the receipt of three or more bid solicitations  
24 by telephone, telephone facsimile or sealed bid, following at least three  
25 days' notice posted on a public bulletin board. Such bids shall be recorded  
26 as provided in subsection (e) of K.S.A. 75-3740 and amendments thereto.  
27 Any purchase that is estimated to be less than \$5,000 may be purchased  
28 under conditions and procedures prescribed by the director of purchases.  
29 Purchases made in compliance with such conditions and procedures shall  
30 be exempt from other provisions of this section.

31 (e) With the approval of the secretary of administration, the director  
32 of purchases may delegate authority to any state agency to make pur-  
33 chases of less than \$25,000 under certain prescribed conditions and pro-  
34 cedures. The director of purchases shall prepare a report at least once in  
35 each calendar quarter of all current and existing delegations of authority  
36 to state agencies as provided in this subsection. The director shall submit  
37 the report to the legislative coordinating council, the chairperson of the  
38 committee on ways and means of the senate, the chairperson of the com-  
39 mittee on appropriations of the house of representatives and the chair-  
40 person of the Kansas performance review board.

41 (f) Subject to the provisions of subsection (e), contracts and purchases  
42 shall be based on specifications approved by the director of purchases.  
43 When deemed applicable and feasible by the director of purchases, such

1 specifications shall include either energy efficiency standards or appro-  
2 priate life cycle cost formulas, or both, for all supplies, materials, equip-  
3 ment and contractual services to be purchased by the state. The director  
4 of purchases may reject a contract or purchase on the basis that a product  
5 is manufactured or assembled outside the United States. No such speci-  
6 fications shall be fixed in a manner to effectively exclude any responsible  
7 bidder offering comparable supplies, materials, equipment or contractual  
8 services.

9 (g) Notwithstanding anything herein to the contrary, all contracts  
10 with independent construction concerns for the construction, improve-  
11 ment, reconstruction and maintenance of the state highway system and  
12 the acquisition of rights-of-way for state highway purposes shall be ad-  
13 vertised and let as now or hereafter provided by law.

14 (h) The director of purchases may authorize state agencies to contract  
15 for services and materials with other state agencies, or with federal agen-  
16 cies, political subdivisions of Kansas, agencies of other states or subdivi-  
17 sions thereof, or private nonprofit educational institutions, without com-  
18 petitive bids.

19 (i) The director of purchases may participate in, sponsor, conduct, or  
20 administer a cooperative purchasing agreement or consortium for pur-  
21 chases of supplies, materials, equipment, and contractual services with  
22 federal agencies or agencies of other states or local units of government.  
23 Cooperative purchasing agreements entered into under this subsection  
24 shall not be subject to K.S.A. 75-3739 through 75-3740a, and amend-  
25 ments thereto. ~~Nothing in this subsection shall allow federal grant moneys~~  
26 ~~to be handled differently from any other moneys of the state unless the~~  
27 ~~requirements of the applicable federal grant specifically require such fed-~~  
28 ~~eral moneys to be handled differently.~~

29 (j) The director of purchases may delegate authority to any state  
30 agency to make purchases under certain prescribed conditions and pro-  
31 cedures when the acquisition is funded, in whole or in part, from a grant.  
32 Purchases made in compliance with such conditions and procedures shall  
33 be exempt from other provisions of this section. As used in this subsection  
34 the term "grant" means a disbursement made from federal or private  
35 funds, or a combination of these sources, to a state agency. *Nothing in*  
36 *this subsection shall allow federal grant moneys to be handled differently*  
37 *from any other moneys of the state unless the requirements of the appli-*  
38 *cable federal grant specifically require such federal moneys to be handled*  
39 *differently.*

40 (k) The director of purchases shall prepare a detailed report at least  
41 once each calendar quarter of all contracts for services, supplies, materials  
42 or equipment entered into pursuant to subsection (h), (i) or (j) and submit  
43 it to the legislative coordinating council, the chairperson of the committee

1 on ways and means of the senate, the chairperson of the committee on  
2 appropriations of the house of representatives and the chairperson of the  
3 Kansas performance review board.

4 (l) Except as otherwise specifically provided by law, no state agency  
5 shall enter into any lease of real property without the prior approval of  
6 the secretary of administration. A state agency shall submit to the sec-  
7 retary of administration such information relating to any proposed lease  
8 of real property as the secretary may require. The secretary of adminis-  
9 tration shall either approve, modify and approve or reject any such pro-  
10 posed lease.

11 (m) The director of purchases shall require all bidders on state con-  
12 tracts to disclose all substantial interests held by the bidder in the state.

13 (n) *No contract shall be awarded under this section to any bidder*  
14 *with employees earning less than the wages and benefits specified in sec-*  
15 *tion 1 and amendments thereto.*

16 Sec. 4. K.S.A. 75-37,103 is hereby amended to read as follows: 75-  
17 37,103. (a) After reasonable notice to the person involved and reasonable  
18 opportunity for that person to be heard, the secretary of administration,  
19 after consultation with the contracting agency and the attorney general,  
20 shall have authority to debar a person for cause from consideration for  
21 award of contracts. The debarment shall not be for a period exceeding  
22 three years. The secretary, after consultation with the contracting agency  
23 and the attorney general, shall have authority to suspend a person from  
24 consideration for award of contracts if there is probable cause to believe  
25 that the person has engaged in any activity which might lead to debar-  
26 ment. The suspension shall not be for a period exceeding three months  
27 unless an indictment has been issued for an offense which would be a  
28 cause for debarment under subsection (b), in which case the suspension  
29 shall, at the request of the attorney general, remain in effect until after  
30 the trial of the suspended person.

31 (b) The causes for debarment include the following:

32 (1) Conviction of a criminal offense as an incident to obtaining or  
33 attempting to obtain a public or private contract or subcontract or in the  
34 performance of such contract or subcontract;

35 (2) conviction under state or federal statutes of embezzlement, theft,  
36 forgery, bribery, falsification or destruction of records, receiving stolen  
37 property or any other offense indicating a lack of business integrity or  
38 business honesty which currently, seriously and directly affects respon-  
39 sibility as a state contractor;

40 (3) conviction under state or federal antitrust statutes;

41 (4) failure without good cause to perform in accordance with the  
42 terms of the contract; ~~or~~

43 (5) *failure without good cause to comply with the wage and benefit*

1 *provisions of section 1 and amendments thereto; or*

2 ~~(5)~~ (6) any other cause the secretary determines to be so serious and  
3 compelling as to affect responsibility as a state contractor, including de-  
4 barment by another governmental entity for any cause pursuant to rules  
5 and regulations.

6 Sec. 5. K.S.A. 75-37,103 and K.S.A. 2000 Supp. 75-3739 is hereby  
7 repealed.

8 Sec. 6. This act shall take effect and be in force from and after its  
9 publication in the statute book.

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