

## HOUSE BILL No. 2385

By Committee on Commerce and Labor

2-14

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AN ACT concerning government; relating to interlocal agreements and private businesses.

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

Section 1. As used in this act, unless the context used clearly shows otherwise:

(a) "Interested party" means:

(1) A private business concern or source that is an actual or prospective offeror for any contract or other form of agreement to perform the required activity and has a direct economic interest in performing the activity that would be adversely affected by a determination not to procure the activity from a private business concern;

(2) a representative of any business or professional association that includes within its membership any private business concern referred to in paragraph (1);

(3) an officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform the activity; or

(4) the head of any labor organization referred to in 5 U.S.C. 7103(a)(4) which includes within its membership officers or employees of an organization in paragraph (3).

(b) "Public agency or public entity" means any department or branch of state government and any state agency, authority, institution, city, county, township or other governmental institution or instrumentality.

(c) "Private business concern" means any commercial enterprise in which no governmental entity holds any degree of ownership or contractual control.

(d) "Purchase of a private business concern" means any acquisition of any degree of ownership or control over a private business concern or such business' products, services or property interests.

Sec. 2. No state governmental entity, by interlocal agreement or otherwise shall engage, authorize or enable the purchase of a private business concern to compete against another private business concern. Furthermore, no product, service or property interest produced by means of an interlocal agreement may compete against a private business concern. However, a public entity may engage in a commercial activity if:

1 (a) The commercial product or activity is not available from any for-  
2 profit or nonprofit private business concern;

3 (b) if the public entity can provide the goods or services resulting  
4 from such commercial activity to other public entities at a lower total cost  
5 than if goods or services were obtained from a for-profit or nonprofit  
6 business concern, to be determined by using uniform accounting stan-  
7 dards to make the cost comparison;

8 (c) use of a for-profit or nonprofit business concern would cause an  
9 unbearable delay or disruption of an essential program; or

10 (d) use of the for-profit or nonprofit business concern would impede  
11 the ability of the public entity to fully comply with any collective bargain-  
12 ing agreement.

13 Sec. 3. (a) Rules and regulations shall require that an offer from a  
14 public entity to perform a commercial activity reflect all of the direct and  
15 indirect costs that are relevant to the performance of the activity by such  
16 public entity, including, but not limited to, the costs listed in subsection  
17 (b). The regulations also shall provide for the offers of private business  
18 concerns and the offers of public entities to be adjusted, with respect to  
19 costs, as necessary to make the offers comparable.

20 (b) The costs referred to in subsection (a) include the following:

21 (1) Costs of salaries and benefits for employees, retirees and their  
22 survivors and dependents, including health and life insurance benefits,  
23 pension and retirement benefits and other post-employment benefits  
24 such as severance payments, training and counseling, continued health  
25 care and unemployment and workers compensation.

26 (2) Costs of materials and supplies used in the work.

27 (3) Costs of office space, equipment, facilities and utilities, including  
28 depreciation expense and property acquisition costs.

29 (4) Costs of goods or services received from other public entities that  
30 are used to produce the output, whether or not such goods or services  
31 are reimbursed.

32 (5) Cost of general administrative services, general research and techni-  
33 cal support, security, rent, employee health and recreation facilities and  
34 operation and maintenance costs for buildings, equipment and utilities.

35 (6) Costs of reorganization and nonrecurring cleanup costs resulting  
36 from facility abandonment.

37 (7) Costs relating to bids and proposals and independent research  
38 and development.

39 (8) Costs relating to product and performance liability.

40 (9) Other relevant costs associated, directly or indirectly, with a public  
41 entity's performance of an activity.

42 (c) The rules and regulations shall require that an offer of a public  
43 entity be evaluated on the basis of the same factors, including relevant

1 technical and noncost factors, on which offers of private business con-  
2 cerns are evaluated.

3 Sec. 4. Any person or private enterprise that is adversely affected by  
4 any action of a public entity which is restricted by this act, or by any  
5 inaction of a public entity with respect to a matter that requires action  
6 by a public entity under paragraphs (a), (b), (c) and (d) of section 2, and  
7 amendments thereto, may file a written statement of objections with the  
8 government competition review committee established by section 5, and  
9 amendments thereto. The statement filed with the committee must state  
10 the reasons why the person or private enterprise is adversely affected.

11 Sec. 5. (a) There is hereby created a joint standing committee on  
12 government competition in the private sector composed of the following  
13 members:

- 14 (1) Two majority party senators, one minority party senator;
- 15 (2) two majority party representatives, one minority party  
16 representative;
- 17 (3) the secretary of administration or the secretary's designee;
- 18 (4) four owners or officers of private business concerns as defined in  
19 section 1, and amendments thereto or members or representatives of  
20 trade associations, one of whom shall be an owner or officer of a private  
21 enterprise having less than \$1,000,000 in gross annual sales in the most  
22 recent calendar or fiscal year or a member or representative of a trade  
23 association that is composed of such enterprises;
- 24 (5) one member or representative of a labor organization that rep-  
25 represents state employees; and
- 26 (6) one member or representative of a labor organization that is rec-  
27 ognized as representing employees in the private sector.

28 (b) (1) The speaker of the house and the president of the senate shall  
29 appoint the requisite members from the house of representatives and  
30 senate.

31 (2) The governor shall appoint the committee members as set out in  
32 paragraphs (3), (4) and (5) to serve for two-year terms expiring on De-  
33 cember 31 of each even-numbered year.

34 (c) (1) No member of the committee may serve for more than five  
35 consecutive full terms.

36 (2) Should a vacancy occur, the new member shall be selected or  
37 appointed as the member being replaced.

38 Sec. 6. When the government competition review committee re-  
39 ceives a written statement of objections as provided in section 4, and  
40 amendments thereto, the following steps shall be taken:

41 (a) The committee shall immediately transmit a copy of the statement  
42 to the head of the public entity which is referred to in the statement.

43 (b) The head of the public entity which is referred to in the statement

1 shall respond to the state review committee in writing within 30 days after  
2 receipt of the statement and, if the action concerns a commercial activity,  
3 shall address fully the objections made in the statement and shall indicate  
4 whether remedial action should be taken to correct the situation that gave  
5 rise to the objections.

6 (c) The committee shall hold a public hearing on the statement where  
7 all parties are afforded the opportunity to present information unless re-  
8 medial action agreed to be taken by the public entity is acceptable to the  
9 person or private enterprise submitting the statement to the state review  
10 committee. The hearing shall be held within 30 days after receipt of the  
11 response under subsection (b) unless the committee determines that ad-  
12 ditional time is needed for negotiations between the public entity and the  
13 person submitting the statement.

14 (d) Within 30 days after any public hearing under subsection (c), the  
15 committee shall issue a binding decision with respect to the matter ad-  
16 dressed in the statement and provide a copy to the person submitting the  
17 statement and to the head of the public entity.

18 Sec. 7. Not later than the end of the third quarter of each fiscal year,  
19 the head of each public entity shall submit to the review committee a list  
20 of activities performed by the public entity which are commercial activ-  
21 ities. The entry for an activity on the list shall include the following:

22 (a) The fiscal year for which the activity first appeared on a list pre-  
23 pared under this section;

24 (b) the number of full-time employees (or its equivalent) that are  
25 necessary for the performance of the activity by a public entity;

26 (c) the name of a government employee responsible for the activity  
27 from whom additional information about the activity may be obtained;

28 (d) a description of the activities performed by the public employees;  
29 and

30 (e) an explanation by the public entity as to why public employees  
31 are performing commercial work as it relates to the provisions of this act.

32 Sec. 8. (a) Upon completion of the review and consultation regarding  
33 a list of a public entity, the head of the public entity shall promptly trans-  
34 mit a copy of the list to the legislature and make the list available to the  
35 public.

36 (b) If the list changes after the publication of the list as a result of  
37 the resolution of a challenge under section 10, and amendments thereto,  
38 the head of the public entity shall promptly:

39 (1) Make each such change available to the public and transmit a copy  
40 of the change to the legislature; and

41 (2) make the change available to the public.

42 Sec. 9. Within 30 days after the date on which the list has been trans-  
43 mitted to the legislature and made available to the public under section

1 8, and amendments thereto, the head of the public entity concerned shall  
2 review the activities on the list. Each time that the head of the public  
3 entity identifies an activity that is not excepted under the provisions in  
4 section 2, and amendments thereto, the head of the unit shall undertake  
5 a process to insure that those activities are in compliance with section 2,  
6 and amendments thereto, and that any process to determine who will  
7 perform these activities will be conducted in accordance with the provi-  
8 sions of this act.

9 Sec. 10. An interested party may submit to the review committee a  
10 challenge of an omission of a particular activity from, or an inclusion of  
11 a particular activity on, a list for which a notice of public availability has  
12 been published under section 8, and amendments thereto.

13 Sec. 11. (a) A challenge to a list shall be submitted to the review  
14 committee within 30 days after the publication of the notice of the public  
15 availability of the list.

16 (b) Within 28 days after the review committee receives a challenge,  
17 the committee shall:

18 (1) Decide the challenge; and

19 (2) transmit to the party submitting the challenge a written notifica-  
20 tion of the decision together with a discussion of the rationale for the  
21 decision and an explanation of the party's right to appeal under subsection  
22 (c).

23 (c) An interested party may appeal an adverse decision of the review  
24 committee within 10 days after receiving a notification of the decision  
25 under subsection (b).

26 (d) Within 10 days after the review committee receives an appeal of  
27 a decision under subsection (c), the head of the review committee shall  
28 decide the appeal and transmit to the party submitting the appeal a writ-  
29 ten notification of the decision together with a discussion of the rationale  
30 for the decision.

31 Sec. 12. This act shall take effect and be in force from and after its  
32 publication in the statute book.

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