

HOUSE BILL No. 2752

By Committee on Appropriations

2-6

10 AN ACT concerning **[employment; relating to the employment of**
11 **illegal aliens; concerning]** state capital improvement projects; re-
12 ferring to architectural, engineering and land surveying services;
13 amending K.S.A. **[21-4409,]** 75-1253, 75-1269 and 75-5804 **[and**
14 **K.S.A. 2003 Supp. 21-4503a]** and repealing the existing sections.
15

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

17 Section 1. K.S.A. 75-1253 is hereby amended to read as follows: 75-
18 1253. (a) Whenever it becomes necessary in the judgment of the secretary
19 of administration or in any case when the total cost of a project for the
20 construction of a building or for major repairs or improvements to a build-
21 ing for a state agency is expected to exceed ~~\$500,000~~ \$750,000, the sec-
22 retary of administration shall convene a negotiating committee. The state
23 building advisory commission shall prepare a list of at least three and not
24 more than five firms which are, in the opinion of the state building ad-
25 visory commission, qualified to serve as project architect for the project.
26 Such list shall be submitted to the negotiating committee, without any
27 recommendation of preference or other recommendation. The secretary
28 of administration shall meet with each negotiating committee and shall
29 advise the negotiating committee but shall have no vote in the selection
30 process or other matter upon which the committee may vote.

31 (b) The secretary of administration may combine two or more sepa-
32 rate projects for the construction of buildings or for major repairs or
33 improvements to buildings for state agencies, for the purpose of procuring
34 architectural services for all such projects from a single firm. In each case,
35 the combined projects shall be construed to be a single project for all
36 purposes under the provisions of K.S.A. 75-1250 to 75-1267, inclusive,
37 and amendments thereto.

38 (c) (1) This section shall not apply to any repetitive project with a
39 standard plan that was originally designed by the secretary of administra-
40 tion or an agency architect pursuant to paragraphs (2) and (3) of subsec-
41 tion (a) of K.S.A. 75-1254, and amendments thereto. In such a case, the
42 secretary of administration or the agency architect may provide architec-
43 tural services for the repetitive project. The repetitive design exception

1 authorized by this subsection shall not apply if the in-house architectural
2 design section of the division of architectural services has a staff of greater
3 than one chief architect and five designers.

4 (2) “Repetitive project” means a project which uses the same stan-
5 dard design as was used for a project constructed previously, including,
6 but not limited to, sub-area shops and salt domes of the department of
7 transportation and showers and toilet buildings of the department of wild-
8 life and parks. The plans for the project may be modified as required for
9 current codes, operational needs or cost control. The total floor area of
10 the project may be increased by an area of not more than 25% of the
11 floor area of the originally constructed project, except that not more than
12 25% of the linear feet of the exterior and interior walls may be moved
13 for such increase. A project shall not be considered to be repetitive if it
14 has been over four years between the substantial completion of the last
15 project using the design plans and the appropriation of funds for the
16 proposed project.

17 Sec. 2. K.S.A. 75-1269 is hereby amended to read as follows: 75-
18 1269. (a) ~~For~~ *The provisions of this section shall apply to the following*
19 *capital improvements projects:*

20 (1) *Any capital improvement projects that is funded from the Kansas*
21 *educational building fund or state institutions building fund and for which*
22 *the department of administration will provide architectural services, en-*
23 *gineering services or management services;*

24 (2) *any other state agency capital improvement project that is not*
25 *financed, in whole or in part, by gifts, bequests or donations made by one*
26 *or more private individuals or other private entities and for which the*
27 *department of administration will provide architectural services, engi-*
28 *neering services or management services; and*

29 (3) *any other state agency capital improvement project that is par-*
30 *tially financed by gifts, bequests or donations made by one or more private*
31 *individuals or other private entities and for which the department of ad-*
32 *ministration will provide architectural services, engineering services or*
33 *management services, except that only that portion of the estimated cost*
34 *of such capital improvement project that is not financed by such gifts,*
35 *bequests or donations shall be subject to the provisions of this section.*

36 (b) (1) ~~When in-house architectural design services under K.S.A. 75-~~
37 ~~1254, and amendments thereto, or in-house engineering design services~~
38 ~~are provided by the department of administration for any project that is~~
39 ~~covered by this section, the secretary of administration shall receive 1%~~
40 ~~fee for such services as provided in this section. Subject to the provisions~~
41 ~~of subsection (b), commencing on July 1, 1986, and each July 1 thereafter,~~
42 ~~the director of accounts and reports shall transfer from appropriation~~
43 ~~accounts of the Kansas educational building fund and state institutions~~

1 ~~building fund to the architectural services recovery fund an amount equal~~
2 ~~to 1% of the appropriations made from the Kansas educational building~~
3 ~~fund and state institutions building fund for the current fiscal year or the~~
4 ~~secretary's designee shall negotiate a design fee with the state agency for~~
5 ~~which the project is being constructed. The negotiated design fee shall be~~
6 ~~a rate or an amount that recovers the costs to the department of admin-~~
7 ~~istration of providing those services.~~

8 (2) *The secretary of administration is authorized to fix, charge and*
9 *collect fees for all other architectural, engineering and management serv-*
10 *ices provided by the department of administration for projects covered*
11 *by this section. The secretary of administration shall use the projected*
12 *cost of a project, the complexity of a project, the type of construction*
13 *involved in a project and the level of services provided by the department*
14 *of administration as factors in establishing the rate or amount of such*
15 *fees. The state agency for which the project is being constructed shall*
16 *remit the fees established under this paragraph to the secretary of ad-*
17 *ministration or the secretary's designee according to the following*
18 *schedule:*

19 (A) *For any project with a total estimated cost of under \$3,000,000,*
20 *the entire fee shall be paid at the time the construction contracts for the*
21 *project are bid.*

22 (B) *For any project with a total estimated cost of \$3,000,000, or more,*
23 *one-half of the fee shall be paid at the time the construction contracts for*
24 *the project are bid, and the remaining one-half shall be paid when con-*
25 *struction of the project is 50% complete.*

26 ~~(b) On July 1, 1986, and each July 1 thereafter, the secretary of ad-~~
27 ~~ministration or the secretary's designee shall submit to the director of~~
28 ~~accounts and reports a listing of capital improvement projects funded for~~
29 ~~the current fiscal year from the Kansas educational building fund and~~
30 ~~state institutions building fund for which the department of administra-~~
31 ~~tion will not be providing architectural services, engineering services or~~
32 ~~management services. The appropriations for such projects shall not be~~
33 ~~included by the director of accounts and reports in computing the amount~~
34 ~~to be transferred pursuant to subsection (a).~~

35 (c) As used in this section:

36 (1) "Architectural services" has the meaning ascribed thereto by
37 K.S.A. 75-1251 and amendments thereto;

38 (2) "engineering services" has the meaning ascribed thereto by K.S.A.
39 75-5802 and amendments thereto; and

40 (3) "management services" means management, consultation, direc-
41 tion, oversight, inspection and other services performed by the secretary
42 of administration under K.S.A. 75-1250 to 75-1268, inclusive, 75-3740 to
43 75-3742, inclusive, 75-3783 to 75-3785, inclusive, and 75-5801 to 75-5807,

1 inclusive, and any amendments to such statutes.

2 (d) All moneys received by the secretary of administration under this
3 section shall be credited to the architectural services recovery fund, which
4 is hereby created in the state treasury. All expenditures from the archi-
5 tectural services recovery fund shall be for operating expenditures of the
6 ~~division of architectural services~~ *department of administration* in accord-
7 ance with appropriations acts upon warrants of the director of accounts
8 and reports issued pursuant to vouchers approved by the secretary of
9 administration or by a person or persons designated by the secretary.

10 Sec. 3. K.S.A. 75-5804 is hereby amended to read as follows: 75-
11 5804. (a) Whenever it becomes necessary in the judgment of the agency
12 head of a state agency for which a project is proposed and, in any case
13 where the total cost of such a proposed project is expected to exceed
14 ~~\$250,000~~ \$500,000, the agency head shall convene a negotiating com-
15 mittee. Except as otherwise provided in subsection (b), the agency head
16 shall submit the list of at least three and not more than five of the most
17 highly qualified firms to the negotiating committee so convened, without
18 any recommendation of preference or other recommendation.

19 (b) Whenever a negotiating committee is convened under this section
20 for a proposed project requiring engineering or land surveying services
21 which concerns the construction of any building or facility or any major
22 repairs or improvements to any building or facility, including but not
23 limited, to any heating, cooling or power facility, for a state agency, the
24 agency head for the state agency shall notify the state building advisory
25 commission of the project and shall request a list of firms qualified to
26 provide the engineering or land surveying services for the proposed pro-
27 ject. Upon receipt of any such request the state building advisory com-
28 mission shall evaluate the current statements of qualifications and per-
29 formance data on file, together with those statements that may be
30 submitted by other firms regarding the proposed project and other in-
31 formation developed and available to the state building advisory commis-
32 sion. The commission shall prepare a list of at least three and not more
33 than five firms which, in the opinion of the state building advisory com-
34 mission, are qualified to furnish the engineering or land surveying services
35 for the proposed project. Each such list shall be submitted to the nego-
36 tiating committee so convened without any recommendation of prefer-
37 ence or other recommendation.

38 **[New Sec. 4. As used in sections 4 through 8, and amendments**
39 **thereto:**

40 **[(a) “Employer” means any person, including any partnership,**
41 **firm, subcontractor, vendor, corporation or association, or agent**
42 **thereof, who engages or utilizes the personal services of one or**
43 **more individuals for a salary or wage;**

1 **[(b) “illegal alien” means any person not a citizen of the United**
2 **States who has entered the United States in violation of the federal**
3 **immigration and naturalization act or regulations issued there-**
4 **under, who has legally entered but without the right to be em-**
5 **ployed in the country, or who has legally entered subject to a time**
6 **limit but has remained illegally after the expiration of such time**
7 **limit, except that the term “illegal alien” shall not mean any person**
8 **who currently has the legal right to remain in the United States**
9 **and to be employed in the United States even though such person**
10 **originally entered the United States in violation of the federal im-**
11 **migration and naturalization act or regulations issued thereunder**
12 **and is not a citizen of the United States;**

13 **[(c) “secretary” means the secretary of human resources;**

14 **[(d) “state agency” means any state office or officer, depart-**
15 **ment, board, commission, institution, bureau or any agency, divi-**
16 **sion or unit within any office, department, board, commission or**
17 **other state authority of this state or any person requesting a state**
18 **appropriation;**

19 **[(e) “state benefit” means any state-administered or subsidized**
20 **tax credit, tax abatement, tax exemption, loan or loan guarantee;**
21 **and**

22 **[(f) “unit of government” means any school board, city or**
23 **county council or commission of this state, including, but not lim-**
24 **ited to, any governmental entity which is wholly or partially tax-**
25 **payer funded or any entity which is the beneficiary of any state**
26 **benefit.**

27 **[New Sec. 5. (a) A person or entity is considered to have com-**
28 **plied with a requirement of sections 4 through 8, and amendments**
29 **thereto, notwithstanding a technical or procedural failure to meet**
30 **such requirement, if there was a good faith attempt to comply with**
31 **the federal requirements found in title 8 of the United States code,**
32 **section 1324a.**

33 **[(b) A person or entity which establishes that it has complied**
34 **in good faith with respect to the hiring, recruiting or referral for**
35 **employment of an alien in the United States has established an**
36 **affirmative defense under sections 4 through 8, and amendments**
37 **thereto.**

38 **[New Sec. 6. (a) No state agency or unit of government shall**
39 **award a public works or purchase contract to a bidder, contractor**
40 **or employer, nor shall a bidder, contractor or employer be eligible**
41 **to bid for or receive a public works contract, who has, in the pre-**
42 **ceding five years: (1) Been convicted of violating a law of this state**
43 **or federal law respecting the employment of illegal aliens, or (2)**

1 been a party to a state agency proceeding in this state in which a
2 penalty or sanction was ordered, either by hearing or final order,
3 or through stipulation and agreement, for violation of a law of this
4 state or federal law respecting the employment of illegal aliens.

5 [(b) Any employer found to be in violation of this section shall,
6 in addition to all available administrative penalties and sanctions,
7 forfeit and be liable for an amount equal to the total value of the
8 state benefit such employer has received or been the beneficiary
9 of for the period of five years leading up to the date of the finding
10 of guilt, not to exceed the federally prescribed civil penalty in title
11 8 of the United States code, section 1324a.

12 [New Sec. 7. The secretary of the department of human re-
13 sources shall be responsible for administering the provisions of
14 sections 4 through 8, and amendments thereto.

15 [New Sec. 8. The provisions of the Kansas administrative pro-
16 cedure act, K.S.A. 77-501 et seq., and amendments thereto, shall
17 govern all proceedings initiated under sections 4 through 8, and
18 amendments thereto.]

19 [New Sec. 9. (a) Subject to the provisions of appropriation
20 acts, the attorney general shall establish a toll free number to re-
21 ceive telephone calls concerning information on persons and busi-
22 ness entities employing illegal aliens in violation of K.S.A. 21-4409,
23 and amendments thereto.

24 [(b) Upon receipt of such information, the attorney general
25 shall forward such information to the local law enforcement
26 agency for investigation.

27 [(c) The attorney general may apply for, receive and accept
28 moneys from any source for the purposes of establishing the
29 hotline.

30 [(d) The attorney general shall publicize, distribute and dis-
31 seminate information on the availability of the hotline to employ-
32 ment agencies, law enforcement agencies and other interested
33 parties.

34 [(e) The attorney general is hereby authorized to adopt rules
35 and regulations concerning the implementation of this section.

36 [Sec. 10. K.S.A. 21-4409 is hereby amended to read as follows:
37 21-4409. (a) Knowingly employing an alien illegally within the ter-
38 ritory of the United States is the employment of such alien within
39 the state of Kansas by an employer who knows such person to be
40 illegally within the territory of the United States. The provisions
41 of this section shall not apply to aliens who have entered the United
42 States illegally and thereafter are permitted to remain within the
43 United States, temporarily or permanently, pursuant to federal

1 law.

2 [(b) **Knowingly employing an alien illegally within the territory**
3 **of the United States is a class C nonperson misdemeanor.** *On the*
4 *second or subsequent conviction of a violation of this section, in addition*
5 *to any other sentence imposed, a person shall be fined \$10,000.*

6 [(c) *As used in this section, “employment” shall include subcontractors’ employees if the employer of the subcontractor has knowledge that the subcontractor is employing persons or subcontracting with persons who are illegally within the territory of the United States.*

10 [Sec. 11. **K.S.A. 2003 Supp. 21-4503a is hereby amended to**
11 **read as follows: 21-4503a. (a) A person who has been convicted of**
12 **a felony may, in addition to the sentence authorized by law, be**
13 **ordered to pay a fine which shall be fixed by the court as follows:**

14 [(1) **For any off-grid felony crime or any felony ranked in severity level 1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding \$500,000.**

17 [(2) **For any felony ranked in severity levels 1 through 5 of the nondrug grid as provided in K.S.A. 21-4704 and amendments thereto or in severity levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding \$300,000.**

22 [(3) **For any felony ranked in severity levels 6 through 10 of the nondrug grid as provided in K.S.A. 21-4704 and amendments thereto or in severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding \$100,000.**

26 [(b) *Except as otherwise provided in statute, a person who has been convicted of a misdemeanor, in addition to or instead of the imprisonment authorized by law, may be sentenced to pay a fine which shall be fixed by the court as follows:*

30 [(1) **For a class A misdemeanor, a sum not exceeding \$2,500.**

31 [(2) **For a class B misdemeanor, a sum not exceeding \$1,000.**

32 [(3) **For a class C misdemeanor, a sum not exceeding \$500.**

33 [(4) **For an unclassified misdemeanor, any sum authorized by the statute that defines the crime. If no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor.**

37 [(c) *As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.*

40 [(d) **A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court, not exceeding \$500.**

43 [(e) **A person who has been convicted of a cigarette or tobacco**

1 **infraction shall be sentenced to pay a fine of \$25.**

2 **[(f) The provisions of this section shall apply to crimes com-**
3 **mitted on or after July 1, 1993.]**

4 **Sec. ~~4~~ [12.] K.S.A. [21-4409,] 75-1253, 75-1269 and 75-5804 [and**
5 **K.S.A. 2003 Supp. 21-4503a]** are hereby repealed.

6 **Sec. ~~5~~ [13.]** This act shall take effect and be in force from and after
7 its publication in the statute book.