

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2442

As Further Amended by House Committee on
Appropriations

Brief*

HB 2442, as further amended, would establish bidding preferences for certified businesses (defined by the bill to include those which employ at least 20 percent of their employees with disabilities and other criteria and outlined in this document in state contract and purchasing laws and also would enact new law to require certain persons who are eligible for reinstatement to the Medicaid program to receive certain services without being placed on a waiting list for services. Under the contract requirements established in the bill, the Director of Purchases and other state agencies would award bids to certified businesses as long as the bidder's total bid cost is not more than 10.0 percent higher than the lowest competitive bid. Further, the contract would be required to contain a promise by the certified business that the percentage of employees that are individuals with disabilities will be maintained throughout the contract term and also specify a condition that the certified business could not subcontract for goods or services in an aggregate amount of more than 25.0 percent of the total cost. The bill would create two exceptions to the Director of Purchases' authority to decide as to the lowest responsible bidder, including allowing bidders to deduct the cost of purchases from their bids for the purpose of determining the lowest possible bid, with the deduction not to exceed 10.0 percent of the original bid.

The bill would require the Secretary of Administration and the Secretary of Social and Rehabilitation Services

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

(SRS) to jointly adopt rules and regulations, as necessary, to effectuate the purpose of the contract provisions, including bids by certified businesses. The bill also would establish reporting requirements associated with the new contract provisions.

On and after January 1, 2014, at the beginning of each regular session of the legislature, the Secretary of Administration and the Secretary of SRS would be required to submit the following information to the House Social Services Budget Committee and the appropriate subcommittee of the Senate Ways and Means Committee:

- The number of "certified businesses" certified by the Department of Administration during the previous calendar year;
- The number of certified businesses awarded contracts pursuant to the new contract provision established by the bill;
- The number of individuals with disabilities removed from or reinstated to home and community based services or other Medicaid program services during the previous calendar year as a result of full-time employment with a certified business; and
- Savings resulting from the removal of individuals with disabilities from home and community based services or other Medicaid program services during the previous calendar year as a result of full-time employment with a certified business.

Additionally, certified businesses awarded a contract in the previous year, on or before January 1, 2014, and every six months thereafter, would be required to submit a report to the Director of Purchases that contains information that includes: the number of contracts awarded to the business during the previous six months; the number of full-time

individuals employed in the previous six months; the number of full-time individuals with disabilities employed during the previous six months; and such other matters relating to certified businesses as the Secretary of Administration deems appropriate.

The bill also would establish definitions associated with the bidding requirements in the bill. Among the definitions, "certified business" would mean any business certified annually by the Department of Administration that is a sole proprietorship, partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that:

- Does business primarily in Kansas or substantially all of its production in Kansas;
- Employs at least 20.0 percent full-time employees in Kansas that are individuals with disabilities;
- Offers to contribute at least 70.0 percent of the premium cost for individual health insurance coverage for each employee; and
- Does not employ individuals under a certificate issued by the U.S. Secretary of Labor under subsection (c) of 29 U.S.C. § 214.

The bill also would define "individual with disabilities" or "individual with a disability" to mean any individual certified by the Department of SRS as having a physical or mental impairment which constitutes a substantial barrier to employment and is:

- Receiving services, has received services, or is eligible to receive services under a home and community based services (HCBS) program;
- Employed by a charitable organization domiciled in the state of Kansas and exempt from federal

income taxation pursuant to section 501(c)(3) of the federal Internal Revenue Code of 1986, as amended; or

- An individual with a severe and persistent mental illness, as determined by a clinical or functional assessment approved by the Secretary of SRS.

Reinstatement of HCBS or Medicaid Program Services to Certain Individuals

The bill would create new law to clearly state there is a rebuttable presumption that an individual with a disability is eligible for reinstatement to the level of home and community based services or other Medicaid program services the individual was entitled to on the day preceding the day this individual stopped receiving HCBS or other Medicaid services if:

- Such individual had received home and community based services or other Medicaid program services pursuant to an application filed with the Department of SRS, and entitlement to receive or receipt of home and community based services or other Medicaid program services terminated due to full-time employment for a certified business, not medical recovery or any other reason; and
- The individual with a disability is currently eligible under a physical or mental impairment that was the basis for the finding of disability that gave rise to the entitlement for the services.

Upon reinstatement to the Medicaid program, the bill would require the individual receive services and not be required to wait to receive services. The Secretary of SRS would be permitted to adopt rules and regulations, as necessary, to effectuate the purpose of the new provision in law.

The bill would take effect and be in force from and after January 1, 2013, and its publication in the statute book.

Background

Representative David Crum, Representative Steve Brunk, Lieutenant Governor Jeff Colyer and conferees representing Business Technology Career Opportunities, the Cerebral Palsy Foundation, the Coalition for Opportunity, the Disability Rights Center of Kansas, InterHab, the Kansas Disability Commission, and the Kansas Association for the Blind and Visually Impaired testified in support of the bill.

A representative of the Disability Rights Center of Kansas requested an amendment to the bill which would require the employers to use a qualified health insurance plan, that employees are paid at least the minimum wage and that individuals with disabilities are granted the opportunity to work fewer than 40 hours per week.

The House Appropriations Committee amended the procurement requirements as follows:

- Require that bidders not subcontract more than 25.0 percent of the total bid cost;
- Require that bidders offer to contribute 70.0 percent of the premium cost for individual health insurance coverage for each employee, and participates in the e-verify program;
- Require that bidders compensate employees at the minimum wage and does not employ 29 U.S.C. § 214(c) allowing sub-minimum compensation for disabled workers;
- Require the Director of Purchases to consider unsolicited proposals for goods or services subject to this section; and

- Amend definitions associated with the contract provisions of the bill.

The Committee amendments also revise the procedure for reinstatement to Medicaid services for certain individuals and insert a definition for the term "Medicaid program."

After the bill was rereferred, the House Committee further amended the bill to remove the e-verify provisions previously added by the House Committee.

There were no opponents to the bill at the time of the House Committee hearing.

According to the fiscal note prepared by the Division of the Budget, passage of the original bill would reduce State General Fund expenditures by \$363,720 and all funds expenditures by \$894,300 starting in FY 2013 by reducing the medical expenditures from the Department of Health and Environment for persons receiving home and community based services who obtain employment and employer-based health insurance coverage from this initiative. The savings are the net amount to be saved by the state after expenditures are made by the Department of Administration for system adjustments associated with enactment of the provisions of the bill.