



February 18, 2020

**Senate Ways & Means Committee
Neutral Testimony SB 375**

Chairwoman McGinn and Members of the Committee,

Thank you for the opportunity to appear before you on behalf of the Kansas Contractors Association (KCA). The KCA represents more than 200 companies working in Kansas' heavy construction industry. Collectively, these companies create and sustain thousands of good-paying, private sector jobs across our state.

The KCA applauds the efforts of the Kansas Department of Transportation, the Joint Legislative Transportation Vision Task Force and the Legislature on working towards a vision for transportation in Kansas. If no vision exists in Kansas for transportation, it is very difficult for contractors, communities and the state to plan, grow and develop a strategy for infrastructure that would modernize, enhance and preserve our system.

There were multiple meetings held around the state the last two years to identify transportation needs and SB 375 is a product of those meeting. New or reinstated policies such as preservation plus, the local bridge and cost share programs, strategic safety improvements and innovative technology are important parts of this bill. SB 375 also prioritizes preservation and many of the traditional policy initiatives in previous transportation plans. All are very important to a comprehensive approach to transportation.

However, where SB 375 is strong with policy initiatives, the foresight of new funding or protection of existing funding is absent.

The KCA would like to draw your attention to a couple of concerns we have with SB 375.

Funding Protection

Developing new transportation plans are a big deal. That's why we look at them every 10 years. All the policy initiatives laid out in SB 375 are important to delivering a solid long-term program. However, without funding, the policy initiatives will not happen.

SB 375 creates the transportation program Forward and relies on the existing KDOT transfers to be eliminated and the dollars remain in the program for 10 years to reach its goals. Forward does not have any new revenue sources identified to help fund the new program. This is unprecedented in Kansas and from my research unusual in the United States. In the past, transportation programs always included new funding.

Kansas last raised the motor fuels tax in 2003. Under T-Works, Kansas saw an increased reliance on sales tax to fund the highway plan. SB 375 and the Forward Transportation Program are not only making similar assumptions as T-Works but is doubling down that after 10 years of highway fund transfers, the highway fund will be made whole and no transfers will occur for the next 10 years. The KCA is hopeful but skeptical this can happen.

KCA believes it is important to include funding protections in SB 375. The first step in protecting the sales tax dedicated to transportation is defined in the new language on page 13, section 11 and page 18 section 12. This clarifies the current law that 16.154% of the 6.5% state sales tax is levied for the state highway fund. It does not change the current tax collected for the state highway fund.

If enacted into law, the language would not prevent future Legislatures from repealing or amending the sales tax statute to restore the virtually unlimited discretion the Legislature currently possesses to dictate the allocation of sales tax revenue to fund other areas of government. However, no sales tax revenue collected pursuant to the 16.154% highway fund levy prior to any such repeal or amendment could be lawfully diverted into the state general fund or lawfully spent for any other purpose. Because legislative action generally operates only on a prospective basis from enactment, any repeal or amendment should not affect the State highway sales tax levy until the next Fiscal year.

The second important factor to protecting funding, is an automatic "trigger" increase on the motor fuels tax if the sales tax transfers are not eliminated by Fiscal year 2024. The amendment is attached to my testimony. The amendment is simple, after July 1, 2023, if the state highway fund transfers continue, there would be an automatic increase to offset the transfer. The increase is not triggered if the state highway fund transfers are eliminated as the Governor and Legislature have discussed. The amendment allows three years for the transfers to be phased out before it would be in effect. The amendment states the motor fuels tax would increase or decrease from year to year depending on whether sales tax was transferred from the state highway fund.

There may be other ways to protect funding in Forward. The Joint Legislative Transportation Vision Task Force discussed a "lock box" approach where a super majority vote would be required to transfer money. The KCA is open to discussing all ideas on how to protect funding in the new transportation program.

The protection of funding in Forward is vitally important to its success. Without protection, KCA believes the state highway funds are in jeopardy when the next recession occurs, most likely sometime within the next program.

Alternative Delivery (pg 6, new section 4)

KCA has historically been opposed to alternative delivery methods of procuring highway and bridge projects. The current system in Kansas of design bid build is effective for ensuring the lowest qualified bid for the taxpayer of Kansas.

The KCA spent the last year in negotiations with KDOT to reach a compromise on alternative delivery as was the intent of the Transportation Task Force recommendations which stated that "KDOT officials work with industry representatives to develop a mutually agreeable proposal for KDOT utilization of alternative project delivery methods to procure transportation projects".

KCA believes there is a place for alternative delivery in the marketplace. In fact, the KCA's last proposal to KDOT was 5% of the total funding of Forward to be used for alternative delivery. The T-Works program included one design build project.

However, the alternative delivery proposal in SB 375 goes too far. It includes 5% of the Forward program but exempts all tolling projects and federal projects. Without including tolling projects, the proposal in SB 375 could total up to \$1.2B to \$1.5B of the total program.

Alternative delivery should be brought along more gradually in Kansas. Small contractors, particularly bridge contractors, who survived the elimination of funding in T-Works, are most vulnerable to a rapid expansion of alternative delivery in Kansas.

Many members of the KCA would be eliminated from participating in alternative delivery projects because they are not staffed to qualify or bid on such projects.

There are two major concerns with alternative delivery:

1. Bundling of projects. Some states have bundled several hundred bridges to bid at one time. Missouri DOT's Safe and Sound Program repaired 802 bridges for \$685 million over five years, and PennDOT's Rapid Bridge Replacement Program fixed 558 bridges for \$899 million over three years. This is a concern for small bridge contractors who would currently be bidding such work over the course of several years.
2. Alternative delivery projects will utilize bonding early in the Forward program for large projects that have been on hold from the T-Works program while revenues were transferred from the highway fund. If funding is not protected in SB 375 and transferred out of the program like T-Works, a large sum of the early money for Forward will be used on alternative delivery projects that most contractors in Kansas will not be equipped to participate.

KCA would ask for an amendment to strike beginning on page 6, new section 4, line 14 through line 16,

The dollar value of projects utilizing toll revenues and projects obtained through federal grants shall not be considered in determining this 5% limit.

And replace with the following language,

Alternative delivery procurement methods could not be utilized for the purposes of bundling multiple projects for construction.

We look forward to continuing discussions with the Legislature and KDOT regarding alternative delivery. This is a major policy shift from the traditional design bid build procurement method that has served Kansas well.

I want to thank Secretary Lorenz, KDOT staff, Sen. McGinn, Sen. Petersen, Rep. Waymaster and Rep. Proehl for their tireless effort to lead on creating a new transportation vision for Kansas. This is important work for our great state and we look forward to working with everyone to see passage of a transportation plan this session.



Michael White, Executive Director
mwhite@webuildkansas.com

(c) On July 1, 2023, and thereafter, each \$18 million or fraction thereof of the tax levied pursuant to subsection (b) which is either not deposited in the state highway fund or transferred from the state highway fund to the state general fund or both shall be hereby automatically, by operation of law without further legislative action, levied and imposed under K.S.A. 79-3401 et seq., in addition to the motor fuel tax imposed at the rate computed as prescribed in K.S.A. 79-34,141 during the preceding fiscal year, a tax per gallon or fraction thereof at the rate of \$0.01 on the use, sale or delivery of all motor-vehicle fuels or special fuels which are used, sold or delivered in this state for any purpose whatsoever. Notwithstanding any other provision of law, all revenue collected and received from such tax levy shall be deposited in the state highway fund and shall be used solely for state highway purposes. Such tax levy shall remain in full force and effect until such time as the Kansas secretary of transportation certifies to the Kansas secretary of revenue and the director of accounts and reports that an amount equal to all diverted tax revenue has been returned to the state highway fund, at which time such additional levy shall be immediately suspended. For purposes of this subsection, "diverted revenue" means all taxes levied pursuant to subsection (b) which are either not deposited in the state highway fund or transferred from the state highway fund to the state general fund or both.