

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2194

By Committee on Appropriations

2-7

1 AN ACT creating the ~~council on efficient government~~ **Kansas**
2 **advisory council on privatization and public-private**
3 **partnerships.**

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. Sections 1 through ~~13~~ **15**, and amendments thereto,
7 shall be known and may be cited as the ~~council on efficient government~~
8 **Kansas advisory council on privatization and public-private**
9 **partnerships act.**

10 Sec. 2. (a) It is the public policy of this state to provide the highest
11 quality services at the lowest possible cost to taxpayers. Efficiency can
12 only be achieved, however, if decisions about how government services
13 are provided are governed by the following fundamental principles:

14 (1) The state government should not compete with private
15 businesses that provide the same goods and services;

16 (2) the state government should not replicate, duplicate or compete
17 with not-for-profit organizations that provide the same goods and
18 services;

19 (3) the state government should not replicate, duplicate or compete
20 with the federal government or local units of government that provide
21 the same goods and services;

22 (4) there are certain functions and operations of state government
23 that are inherently governmental and cannot be outsourced, and these
24 activities are intimately related to the public interest; and

25 5) when activities are clearly not governmental functions and
26 operations, the state government should conduct a rigorous comparison
27 of private business or not-for-profit organizational costs with the costs
28 of the state government providing those functions and operations.

29 (b) The purpose of the ~~council on efficient government~~ **Kansas**
30 **advisory council on privatization and public-private partnerships**
31 is:

1 (1) To ensure that each state agency focuses on its core mission,
2 and delivers goods and services effectively and efficiently by
3 leveraging resources and contracting with private business suppliers or
4 not-for-profit organizations if those entities can more effectively and
5 efficiently provide such goods and services thereby reducing the cost of
6 government while expanding those services to the greatest number of
7 citizens;

8 (2) to develop a comprehensive and detailed process to analyze
9 opportunities to improve the efficiency, cost-effectiveness and quality
10 of state governmental services, operations, functions and activities; and

11 (3) to evaluate for feasibility, cost-effectiveness and efficiency,
12 business cases that potentially could be outsourced and make
13 recommendations to state agencies prior to the outsourcing of goods or
14 services.

15 Sec. 3. As used in sections 1 through ~~13~~ **15**, and amendments
16 thereto:

17 (a) “Activity” means the provision of goods or services or the
18 performance of any function or operation by a state agency.

19 (b) “Affiliated” means a person who directly or indirectly through
20 one or more intermediaries, controls or is controlled by, or is under
21 common control with, a specified entity.

22 (c) “Business case” means any proposal to outsource a state
23 agency activity or eliminate replication or duplication of a state agency
24 activity and operations carried out by a private business, not-for-profit
25 organization or other government agency.

26 (d) “Contractor” means any private business or not-for-profit
27 organization that contracts with a state agency to perform an activity
28 previously performed by such state agency.

29 (e) “State agency” means any department, authority, office or
30 other governmental agency[, **including the board of regents and any**
31 **postsecondary educational institution,**] of this state. The term shall
32 not include any political subdivision of the state, municipality or other
33 unit of local government.

34 Sec. 4. (a) There is hereby created a body politic and corporate
35 to be known as the ~~council on efficient government~~ **Kansas advisory**
36 **council on privatization and public-private partnerships**. The
37 ~~council on efficient government~~ **Kansas advisory council on**
38 **privatization and public-private partnerships** is hereby constituted a
39 public instrumentality and the exercise of the authority and powers

1 conferred by this act shall be deemed and held to be the performance of
2 an essential governmental function.

3 (b) The council shall consists of 11 members as follows:

4 (1) One member, who shall be either the lieutenant governor or the
5 chief executive of a state agency, who shall be appointed by the
6 governor;

7 (2) two members, who shall be engaged in private business and are
8 not members of the legislature, appointed by the governor;

9 (3) three members, who shall be engaged in private business and
10 only one of whom may be a member of the legislature, appointed by
11 the president of the senate;

12 (4) three members, who shall be engaged in private business and
13 only one of whom may be a member of the legislature, appointed by
14 the speaker of the house of representatives;

15 (5) one member, who shall be engaged in private business and who
16 shall not be a member of the legislature, appointed by the minority
17 leader of the senate; and

18 (6) one member, who shall be engaged in private business and who
19 shall not be a member of the legislature, appointed by the minority
20 leader of the house of representatives.

21 (c) Members shall be subject to confirmation by the senate as
22 provided in K.S.A. 75-4315b, and amendments thereto. Except as
23 provided by K.S.A. 46-2601, and amendments thereto, no person
24 appointed to the council shall exercise any power, duty or function as a
25 member of the council until confirmed by the senate.

26 (d) Members shall serve for a term of two years. Terms of
27 members appointed pursuant to this section shall expire on March 15.
28 In the case of the member who is a state official, such member shall
29 serve for a term of two years, or until such member ceases to hold
30 public office, whichever occurs first. Members shall serve until a
31 successor is appointed and confirmed.

32 (e) After the expiration of a member's term, or whenever a
33 vacancy occurs a member shall be appointed as described in subsection
34 (a). In the event of a vacancy the appointment shall be for the
35 remainder of the unexpired portion of the term. Any member is eligible
36 for reappointment for successive two-year terms.

37 (f) No member shall appoint a designee to serve in such member's
38 place on the council.

39 (g) The council shall annually elect a member as chairperson. The

1 member appointed pursuant to paragraph (a)(1) and any member who is
2 a member of the legislature is not eligible to serve as chairperson.

3 (h) The council shall meet at least four times a year at the call of
4 the chairperson. A quorum shall consist of a majority of the members of
5 the council.

6 (i) Members attending council meetings shall be entitled to
7 compensation and expenses as provided in K.S.A. 75-3223, and
8 amendments thereto.

9 Sec. 5. (a) In order to achieve its purpose as provided in this act,
10 ~~the council on efficient government~~ **Kansas advisory council on**
11 **privatization and public-private partnerships** shall:

12 (1) Review and evaluate the possibility of outsourcing goods or
13 services provided by a state agency to a private business or not-for-
14 profit organization that is able to provide the same type of good or
15 service and whether such action would result in cost savings to the
16 state;

17 (2) review and evaluate the possibility of outsourcing operations or
18 functions of a state agency to a private business or not-for-profit
19 organization that is able to more efficiently and cost-effectively
20 perform such operation or function;

21 (3) review and evaluate instances where a state agency is
22 providing goods or services in competition with one or more private
23 businesses to determine ways to eliminate such competition;

24 (4) review and evaluate instances where a state agency is
25 providing goods or services that replicate, duplicate or compete with
26 one or more not-for-profit organizations or federal or local units of
27 government;

28 (5) make any requests it deems necessary to state agencies for an
29 inventory of such agency's activities that may be outsourced, or that
30 compete with, replicate or duplicate activities provided by private
31 entities or federal or local units of government;

32 (6) develop and implement a standard process for reviewing
33 business cases pursuant to this act;

34 (7) make recommendations to state agencies regarding the
35 outsourcing of operations, functions and the provision of goods and
36 services based on the council's review and evaluation of business cases
37 pursuant to this act; and

38 (8) identify and distribute information regarding the best practices
39 in outsourcing efforts to state agencies.

1 (b) The council may appoint advisory groups, provided, at least
2 one member of the council is appointed to each such group.

3 (c) The council shall annually prepare and submit a report to the
4 governor, the committee on ways and means of the senate and the
5 committee on appropriations of the house of representatives. The report
6 shall be submitted no later than January 15, and shall contain details of
7 the council's activities for the immediately preceding year and include
8 the following:

9 (1) Recommendations on methods of delivering government
10 services that would improve the efficiency, effectiveness and delivery
11 of government services;

12 (2) outsourcing efforts of state agencies, including the number of
13 business cases reviewed, those recommended for outsourcing and the
14 state agency action on the business case; and

15 (3) information on all outsourcing contracts entered into the
16 preceding year, including, the dollar value of each outsourcing contract,
17 descriptions of performance results, any breach of contract or
18 inadequate performance, and the status of extensions, renewals and
19 amendments of outsourcing contracts.

20 Sec. 6. The staff of the legislative research department shall
21 provide such assistance as may be requested by the ~~council on efficient~~
22 ~~government~~ **Kansas advisory council on privatization and public-**
23 **private partnerships.**

24 Sec. 7. (a) A business case may be submitted by the governor,
25 any member of the legislature, any state agency, a private business, a
26 not-for-profit organization or any government entity that is not a state
27 agency. A business case shall be submitted in the manner and form
28 prescribed by the council.

29 (b) A business case shall include the following:

30 (1) A description of the state agency activity the council is to
31 review and evaluate;

32 (2) a description of the private market for such activity; and

33 (3) a proposal as to the price to be paid by the state agency if such
34 activity were outsourced.

35 (c) If the business case is submitted by a state agency, the
36 following shall also be included in the business case:

37 (1) A description and analysis of the agency's performance with
38 respect to such activity;

39 (2) an analysis comparing the potential costs and savings to the

1 agency between outsourcing the activity and continuing to perform
2 such activity;

3 (3) a citation to existing legal authority for outsourcing such
4 activity;

5 (4) a transition plan that addresses changes in personnel,
6 equipment, office location and communication with clients and the
7 general public should such activity be outsourced;

8 (5) a description of any legislative action necessary to accomplish
9 the outsourcing of such activity; and

10 (6) a description of specific performance standards that a
11 contractor must meet in performing such activity, including:

12 (A) Specific and measurable goals to be met by the contractor;

13 (B) a plan to ensure compliance by the contractor with all
14 applicable laws and regulations; and

15 (C) a contingency plan addressing the contractor's
16 nonperformance or inadequate performance of such activity.

17 (d) If the business case is submitted by an entity other than a state
18 agency, the council shall send a copy of the submitted business case to
19 the state agency currently performing the activity in question. The state
20 agency shall have 30 days from receipt of the business case to submit a
21 response to the council. The response shall include those items set forth
22 in subsection (c).

23 (e) The council may review and evaluate any business case that is
24 submitted to the council to determine: (1) If there is competition,
25 replication or duplication of an activity by a state agency with a private
26 business, not-for-profit organization or other government entity; (2)
27 whether such activity may be outsourced such state agency; and (3) the
28 costs and savings that will likely result from such outsourcing.

29 (f) In conducting its review and evaluation of a business case the
30 council shall consider the state agency's response submitted pursuant to
31 subsection (d), if applicable, and determine whether the activity in
32 question is an inherent governmental function that cannot be
33 outsourced, or a commercial activity which may be performed by an
34 entity other than the state agency. The council may hold public
35 hearings, seek advice from advisory groups and request additional
36 information from the state agency.

37 (g) Any member of the council that is either employed by the state
38 agency which is performing the activity that is the subject of a business
39 case under review, or is affiliated with a private business or not-for-

1 profit organization that could perform such activity shall not participate
2 in the review and evaluation of that particular business case.

3 (h) Upon completion of its review and evaluation the council shall
4 prepare a report on its findings and recommendations. Copies of the
5 council's final report on a business case shall be sent to the entity that
6 initially submitted the business case, and the state agency which
7 performs the activity that is the subject of the business case.

8 (i) Any state agency receiving a report pursuant to subsection (h)
9 shall submit a response to the council within 45 days after receipt of the
10 report. The response shall include the agency decision with respect to
11 outsourcing or eliminating the activity, the reasons supporting the
12 decision and the implementation date, if any.

13 Sec. 8. Any contract entered into by a state agency with a private
14 business or not-for-profit organization which is an agreement for the
15 private business or not-for-profit organization to perform an activity
16 previously performed by the state agency shall include the following:

17 (a) A specific scope of work statement clearly identifying the
18 activity to be performed by the contractor;

19 (b) if services are being provided, an agreement as to what
20 constitutes adequate provision of such services, and the ability of the
21 state agency to resume provision of such services if not adequately
22 provided by the contractor;

23 (c) a specific transition plan providing for the transfer of the
24 activities in question to the contractor;

25 (d) specific and measurable performance standards that must be
26 met by the contractor;

27 (e) a provision granting the state agency access to all relevant
28 documents and records of the contractor necessary for the purposes of
29 verifying the contractor is meeting all performance standards and
30 auditing the contractor's performance;

31 (f) a provision requiring the contractor to interview and consider
32 for employment any state employee previously employed by the state
33 agency who expresses an interest in such employment; and

34 (g) a contingency plan for transferring such activity back to the
35 state agency in the event the contractor does not meet the required
36 performance standards.

37 Sec. 9. (a) When any contract for the purchase of goods or
38 services by any state agency, as that term is defined in K.S.A. 75-3701,
39 and amendments thereto, is not awarded to a vendor after such vendor

1 has submitted the lowest bid for such contract, the director of
 2 purchasing of the department of administration shall prepare a written
 3 explanation detailing the reasons why such vendor was not awarded the
 4 contract and why the deficiencies in such vendor's bid could not be
 5 remedied to the satisfaction of the director. In the event the contract is
 6 awarded by a state agency other than the department of administration,
 7 such state agency shall prepare a written explanation detailing the
 8 reasons why such vendor was not awarded the contract and why the
 9 deficiencies in such vendor's bid could not be remedied to the
 10 satisfaction of the head of such state agency, and submit such written
 11 explanation to the director of purchasing of the department of
 12 administration.

13 (b) On or before January 12, the director of purchasing of the
 14 department of administration shall transmit to the standing committee
 15 on appropriations of the house of representatives, the standing
 16 committee on ways and means of the senate and the ~~council on efficient~~
 17 ~~government~~ **Kansas advisory council on privatization and public-**
 18 **private partnerships** a report that shall include all written explanations
 19 prepared in accordance with this section during the immediately
 20 preceding year.

21 (c) The provisions of this section shall not apply to contracts that
 22 are subject to the provisions of K.S.A. 75-5801 et seq., and
 23 amendments thereto, or K.S.A. 75-1250 et seq., and amendments
 24 thereto, or to contracts in support of the planning, development or
 25 implementation of a road, bridge or public transportation construction
 26 program of the department of transportation.

27 Sec. 10. (a) When any contract for the purchase of goods or
 28 services by any state agency, as that term is defined in K.S.A. 75-3701,
 29 and amendments thereto, is not awarded to a vendor that is: (1)
 30 Domiciled in this state; (2) proposing to have the work which is the
 31 subject matter of the contract performed by employees subject to
 32 Kansas income withholding taxes; and (3) subject to Kansas income
 33 taxes, the director of purchasing of the department of administration
 34 shall prepare a written explanation detailing the reasons why such
 35 vendor was not awarded the contract and why the deficiencies in such
 36 vendor's bid could not be remedied to the satisfaction of the director. In
 37 the event the contract is awarded by a state agency other than the
 38 department of administration, such state agency shall prepare a written
 39 explanation detailing the reasons why such vendor was not awarded the

1 contract and why the deficiencies in such vendor's bid could not be
2 remedied to the satisfaction of the head of such state agency, and
3 submit such written explanation to the director of purchasing of the
4 department of administration.

5 (b) On or before January 12, the director of purchasing of the
6 department of administration shall transmit to the standing committee
7 on appropriations of the house of representatives, the standing
8 committee on ways and means of the senate and the ~~council on efficient~~
9 ~~government~~ **Kansas advisory council on privatization and public-**
10 **private partnerships** a report that shall include all written explanations
11 prepared in accordance with this section during the immediately
12 preceding year.

13 (c) The provisions of this section shall not apply to contracts that
14 are subject to the provisions of K.S.A. 75-5801 et seq., and
15 amendments thereto, or K.S.A. 75-1250 et seq., and amendments
16 thereto, to contracts in support of the planning, development or
17 implementation of a road, bridge or public transportation construction
18 program of the department of transportation or to contracts for building
19 construction.

20 (d) For purposes of this section, the term "building construction"
21 means furnishing labor, equipment, material or supplies used or
22 consumed for the design, construction, alteration, renovation, repair or
23 maintenance of a building or structure; including multilevel parking
24 structures and stand-alone parking lots.

25 Sec. 11. (a) Any contract for the purchase of goods or services
26 by any state agency, as that term is defined in K.S.A. 75-3701, and
27 amendments thereto, which includes a provision for the automatic
28 renewal or extension of such contract, shall be reviewed by the head of
29 such agency to determine if such contract shall be allowed to be
30 automatically renewed or extended. Such review shall include an
31 evaluation of the cost savings the agency might benefit from if the
32 agency were to terminate the contract and issue a new request for
33 proposal. If the head of the state agency determines that it is in the
34 agency's best interest to allow the contract to be automatically renewed
35 or extended, then the head of the state agency shall prepare a written
36 explanation detailing the reasons why such contract was allowed to be
37 automatically renewed or extended and submit such written explanation
38 to the director of purchasing of the department of administration.

39 (b) On or before January 12, the director of purchasing of the

1 department of administration shall transmit to the standing committee
2 on appropriations of the house of representatives, the standing
3 committee on ways and means of the senate and the ~~council on efficient~~
4 ~~government~~ **Kansas advisory council on privatization and public-**
5 **private partnerships** a report that shall include all written explanations
6 prepared in accordance with this section during the immediately
7 preceding year.

8 (c) The provisions of this section shall not apply to contracts that
9 are subject to the provisions of K.S.A. 75-5801 et seq., and
10 amendments thereto, or K.S.A. 75-1250 et seq., and amendments
11 thereto, or to contracts in support of the planning, development or
12 implementation of a road, bridge or public transportation construction
13 program of the department of transportation.

14 ~~Sec. 12. The provisions of sections 1 through 13 15, and 19~~
15 **through 11, and]** amendments thereto, shall not apply to any activity
16 conducted by or under the authority of the state board of regents, or to
17 any contract entered into by the state board of regents or any
18 postsecondary educational institution, as defined by K.S.A. 74-3201b,
19 and amendments thereto.

20 **Sec. 13. The provisions of this act shall only apply to state**
21 **agencies that receive state appropriations, state general funds or**
22 **federal funds appropriated through the state.**

23 ~~Sec. 14.~~ If any provision of sections 1 through ~~13 15,~~ and
24 amendments thereto, or the application thereof to any persons or
25 circumstances is held invalid, such invalidity shall not affect other
26 provisions or application of the act which can be given effect without
27 the invalid provisions or application and to this end the provisions of
28 sections 1 through ~~13 15,~~ and amendments thereto, are declared to be
29 severable.

30 ~~Sec. 14. This act shall take effect and be in force from and after its~~
31 ~~publication in the statute book.~~

32 **Sec. 15. The provisions of sections 1 through 15, and**
33 **amendments thereto, shall expire on July 1, 2014.**

34 ~~Sec. 15.~~ **16.** This act shall take effect and be in force from and
35 after its publication in the statute book.

36