As Amended by House Committee
Session of 2011

HOUSE BILL No. 2194

By Committee on Appropriations

2-7

AN ACT creating the council on efficient government Kansas advisory council on privatization and public-private partnerships.

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

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

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

1. The state government should not compete with private businesses that provide the same goods and services;
2. The state government should not replicate, duplicate or compete with not-for-profit organizations that provide the same goods and services;
3. The state government should not replicate, duplicate or compete with the federal government or local units of government that provide the same goods and services;
4. There are certain functions and operations of state government that are inherently governmental and cannot be outsourced, and these activities are intimately related to the public interest; and
5. When activities are clearly not governmental functions and operations, the state government should conduct a rigorous comparison of private business or not-for-profit organizational costs with the costs of the state government providing those functions and operations.

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

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

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

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

Sec. 3. As used in sections 1 through 15, and amendments thereto:

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

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

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

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

(e) “State agency” means any department, authority, office or other governmental agency of this state. The term shall not include any political subdivision of the state, municipality or other unit of local government.

Sec. 4. (a) There is hereby created a body politic and corporate to be known as the council on efficient government Kansas advisory council on privatization and public-private partnerships. The council on efficient government Kansas advisory council on privatization and public-private partnerships is hereby constituted a public instrumentality and the exercise of the authority and powers conferred by this act shall be deemed and held to be the performance of an essential governmental function.

(b) The council shall consists of 11 members as follows:
(1) One member, who shall be either the lieutenant governor or the chief executive of a state agency, who shall be appointed by the governor;
(2) two members, who shall be engaged in private business and are not members of the legislature, appointed by the governor;
(3) three members, who shall be engaged in private business and only one of whom may be a member of the legislature, appointed by the president of the senate;
(4) three members, who shall be engaged in private business and only one of whom may be a member of the legislature, appointed by the speaker of the house of representatives;
(5) one member, who shall be engaged in private business and who shall not be a member of the legislature, appointed by the minority leader of the senate; and
(6) one member, who shall be engaged in private business and who shall not be a member of the legislature, appointed by the minority leader of the house of representatives.
(c) Members shall be subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the council shall exercise any power, duty or function as a member of the council until confirmed by the senate.
(d) Members shall serve for a term of two years. Terms of members appointed pursuant to this section shall expire on March 15. In the case of the member who is a state official, such member shall serve for a term of two years, or until such member ceases to hold public office, whichever occurs first. Members shall serve until a successor is appointed and confirmed.
(e) After the expiration of a member’s term, or whenever a vacancy occurs a member shall be appointed as described in subsection (a). In the event of a vacancy the appointment shall be for the remainder of the unexpired portion of the term. Any member is eligible for reappointment for successive two-year terms.
(f) No member shall appoint a designee to serve in such member’s place on the council.
(g) The council shall annually elect a member as chairperson. The member appointed pursuant to paragraph (a)(1) and any member who is a member of the legislature is not eligible to serve as chairperson.
(h) The council shall meet at least four times a year at the call of
the chairperson. A quorum shall consist of a majority of the members of
the council.
(i) Members attending council meetings shall be entitled to
compensation and expenses as provided in K.S.A. 75-3223, and
amendments thereto.
Sec. 5. (a) In order to achieve its purpose as provided in this act,
the council on efficient government Kansas advisory council on
privatization and public-private partnerships shall:
(1) Review and evaluate the possibility of outsourcing goods or
services provided by a state agency to a private business or not-for-
profit organization that is able to provide the same type of good or
service and whether such action would result in cost savings to the
state;
(2) review and evaluate the possibility of outsourcing operations or
functions of a state agency to a private business or not-for-profit
organization that is able to more efficiently and cost-effectively
perform such operation or function;
(3) review and evaluate instances where a state agency is
providing goods or services in competition with one or more private
businesses to determine ways to eliminate such competition;
(4) review and evaluate instances where a state agency is
providing goods or services that replicate, duplicate or compete with
one or more not-for-profit organizations or federal or local units of
government;
(5) make any requests it deems necessary to state agencies for an
inventory of such agency's activities that may be outsourced, or that
compete with, replicate or duplicate activities provided by private
entities or federal or local units of government;
(6) develop and implement a standard process for reviewing
business cases pursuant to this act;
(7) make recommendations to state agencies regarding the
outsourcing of operations, functions and the provision of goods and
services based on the council’s review and evaluation of business cases
pursuant to this act; and
(8) identify and distribute information regarding the best practices
in outsourcing efforts to state agencies.
(b) The council may appoint advisory groups, provided, at least
one member of the council is appointed to each such group.
(c) The council shall annually prepare and submit a report to the
governor, the committee on ways and means of the senate and the
committee on appropriations of the house of representatives. The report
shall be submitted no later than January 15, and shall contain details of
the council’s activities for the immediately preceding year and include
the following:
(1) Recommendations on methods of delivering government
services that would improve the efficiency, effectiveness and delivery
of government services;
(2) outsourcing efforts of state agencies, including the number of
business cases reviewed, those recommended for outsourcing and the
state agency action on the business case; and
(3) information on all outsourcing contracts entered into the
preceding year, including, the dollar value of each outsourcing contract,
descriptions of performance results, any breach of contract or
inadequate performance, and the status of extensions, renewals and
amendments of outsourcing contracts.
Sec. 6. The staff of the legislative research department shall
provide such assistance as may be requested by the Kansas advisory council on privatization and public-
private partnerships.
Sec. 7. (a) A business case may be submitted by the governor,
any member of the legislature, any state agency, a private business, a
not-for-profit organization or any government entity that is not a state
agency. A business case shall be submitted in the manner and form
prescribed by the council.
(b) A business case shall include the following:
(1) A description of the state agency activity the council is to
review and evaluate;
(2) a description of the private market for such activity; and
(3) a proposal as to the price to be paid by the state agency if such
activity were outsourced.
(c) If the business case is submitted by a state agency, the
following shall also be included in the business case:
(1) A description and analysis of the agency’s performance with
respect to such activity;
(2) an analysis comparing the potential costs and savings to the
agency between outsourcing the activity and continuing to perform
such activity;
(3) a citation to existing legal authority for outsourcing such
activity;
(4) a transition plan that addresses changes in personnel, equipment, office location and communication with clients and the general public should such activity be outsourced;
(5) a description of any legislative action necessary to accomplish the outsourcing of such activity; and
(6) a description of specific performance standards that a contractor must meet in performing such activity, including:
   (A) Specific and measurable goals to be met by the contractor;
   (B) a plan to ensure compliance by the contractor with all applicable laws and regulations; and
   (C) a contingency plan addressing the contractor’s nonperformance or inadequate performance of such activity.
(d) If the business case is submitted by an entity other than a state agency, the council shall send a copy of the submitted business case to the state agency currently performing the activity in question. The state agency shall have 30 days from receipt of the business case to submit a response to the council. The response shall include those items set forth in subsection (c).
(e) The council may review and evaluate any business case that is submitted to the council to determine: (1) If there is competition, replication or duplication of an activity by a state agency with a private business, not-for-profit organization or other government entity; (2) whether such activity may be outsourced such state agency; and (3) the costs and savings that will likely result from such outsourcing.
(f) In conducting its review and evaluation of a business case the council shall consider the state agency’s response submitted pursuant to subsection (d), if applicable, and determine whether the activity in question is an inherent governmental function that cannot be outsourced, or a commercial activity which may be performed by an entity other than the state agency. The council may hold public hearings, seek advice from advisory groups and request additional information from the state agency.
(g) Any member of the council that is either employed by the state agency which is performing the activity that is the subject of a business case under review, or is affiliated with a private business or not-for-profit organization that could perform such activity shall not participate in the review and evaluation of that particular business case.
(h) Upon completion of its review and evaluation the council shall
prepare a report on its findings and recommendations. Copies of the
council’s final report on a business case shall be sent to the entity that
initially submitted the business case, and the state agency which
performs the activity that is the subject of the business case.

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

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

(a) A specific scope of work statement clearly identifying the
activity to be performed by the contractor;
(b) if services are being provided, an agreement as to what
constitutes adequate provision of such services, and the ability of the
state agency to resume provision of such services if not adequately
provided by the contractor;
(c) a specific transition plan providing for the transfer of the
activities in question to the contractor;
(d) specific and measurable performance standards that must be
met by the contractor;
(e) a provision granting the state agency access to all relevant
documents and records of the contractor necessary for the purposes of
verifying the contractor is meeting all performance standards and
auditing the contractor’s performance;
(f) a provision requiring the contractor to interview and consider
for employment any state employee previously employed by the state
agency who expresses an interest in such employment; and
(g) a contingency plan for transferring such activity back to the
state agency in the event the contractor does not meet the required
performance standards.

Sec. 9. (a) When any contract for the purchase of goods or
services by any state agency, as that term is defined in K.S.A. 75-3701,
and amendments thereto, is not awarded to a vendor after such vendor
has submitted the lowest bid for such contract, the director of
purchasing of the department of administration shall prepare a written
explanation detailing the reasons why such vendor was not awarded the
contract and why the deficiencies in such vendor’s bid could not be remedied to the satisfaction of the director. In the event the contract is awarded by a state agency other than the department of administration, such state agency shall prepare a written explanation detailing the reasons why such vendor was not awarded the contract and why the deficiencies in such vendor’s bid could not be remedied to the satisfaction of the head of such state agency, and submit such written explanation to the director of purchasing of the department of administration.

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

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

Sec. 10. (a) When any contract for the purchase of goods or services by any state agency, as that term is defined in K.S.A. 75-3701, and amendments thereto, is not awarded to a vendor that is: (1) Domiciled in this state; (2) proposing to have the work which is the subject matter of the contract performed by employees subject to Kansas income withholding taxes; and (3) subject to Kansas income taxes, the director of purchasing of the department of administration shall prepare a written explanation detailing the reasons why such vendor was not awarded the contract and why the deficiencies in such vendor’s bid could not be remedied to the satisfaction of the director. In the event the contract is awarded by a state agency other than the department of administration, such state agency shall prepare a written explanation detailing the reasons why such vendor was not awarded the contract and why the deficiencies in such vendor’s bid could not be remedied to the satisfaction of the head of such state agency, and submit such written explanation to the director of purchasing of the
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(c) The provisions of this section shall not apply to contracts that are subject to the provisions of K.S.A. 75-5801 et seq., and amendments thereto, or K.S.A. 75-1250 et seq., and amendments thereto, to contracts in support of the planning, development or implementation of a road, bridge or public transportation construction program of the department of transportation or to contracts for building construction.

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

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

(b) On or before January 12, the director of purchasing of the department of administration shall transmit to the standing committee on appropriations of the house of representatives, the standing committee on ways and means of the senate and the council on efficient government Kansas advisory council on privatization and public-private partnerships a report that shall include all written explanations prepared in accordance with this section during the immediately preceding year. The provisions of this section shall not apply to contracts that are subject to the provisions of K.S.A. 75-5801 et seq., and amendments thereto, or K.S.A. 75-1250 et seq., and amendments thereto, to contracts in support of the planning, development or implementation of a road, bridge or public transportation construction program of the department of transportation or to contracts for building construction.

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

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

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

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

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

Sec. 16. The provisions of sections 1 through 15, and amendments thereto, shall expire on July 1, 2014.