Substitute for HOUSE BILL No. 2798

By Committee on Higher Education Budget

3-16

AN ACT concerning postsecondary education; granting state educational institutions the authority to conduct transactions involving contracts, easements and the procurement of goods and services; exempting such state educational institutions from statutes governing such transactions; authorizing legislators to request copies of certain documents; amending K.S.A. 74-3264, 75-1251, 75-2131, 75-3729, 75-3731a, 75-3743, 75-3744, 75-37,115, 75-5802, 75-6606, 76-769 and repealing the existing sections.

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

New Section 1. (a) As used in this section, "state educational institution" means the same as defined in K.S.A. 76-711, and amendments thereto.

(b) Notwithstanding any other law to the contrary, pursuant to policies promulgated by the state educational institution and approved by the state board of regents, each state educational institution shall have the power, which may be exercised as necessary and practical for the operation and mission of such state educational institution, to:

(1) Execute contracts, other instruments and agreements necessary or convenient for the exercise of the state educational institution's powers and functions, including, but not limited to, making and executing contracts with public or private entities for the operation, management or support of any state educational institution facilities, programs or activities;

(2) procure goods, services, materials, supplies, printing and insurance, including, but not limited to, all vendor relationships and construction and development services, except that the procurement policies of each state educational institution shall provide for a competitive bid process. Pursuant to the promulgated policy, any state educational institution may request and use the list of firms qualified to provide engineering or land surveying services prepared pursuant to K.S.A. 75-5803, and amendments thereto; and

(3) grant or convey right-of-way easements, with or without consideration, across, over, upon or under any land that is in the custody and control of such state educational institution and belongs to such state educational institution or the state of Kansas. Such easements may include rights for parking, playground or other related uses and rights of ingress or

egress for the purpose of constructing, maintaining or removing any facility, equipment, pipeline, power line, sewer or other public utility installation or any equipment or appurtenances necessary to the operation thereof. Such policies shall safeguard the public interest and protect the use, whether present or future, of such state lands, together with any improvements thereon.

(c) Notwithstanding any other law to the contrary, subject to policies promulgated by the state educational institution and, to the extent such policies relate to statutory requirements from which state educational institutions are exempt, also approved by the state board, each state educational institution shall not be subject to any additional policy, process or procedure that requires the submission, review or approval of the procurement, purchase or contracting for goods or services or of any easements.

(d) Pursuant to policies promulgated by the state educational institution and approved by the state board, each state educational institution shall maintain an inventory record showing all fixed and movable property of such state educational institution.

(e) A legislator is authorized to request and receive from a state educational institution and the state board of regents a copy of all policies promulgated pursuant to this section and a copy of any signed contract with public or private entities for the operation, management or support of any state educational institution facilities, programs or activities. Each request for a copy of such document or documents shall be acted upon as soon as possible but not later than the end of the 5th business day following the date that the request is received.

Sec. 2. K.S.A. 74-3264 is hereby amended to read as follows: 74-3264. (a) In addition to the authority provided for the granting or conveying of right-of-way easements under K.S.A. 75-2131, and amendments thereto, the state board of regents or a designee, with or without receiving consideration therefor, may grant or convey right-of-way easements across, over, under, upon or through any land belonging to the state~~,~~ and under the custody and control of the board of regents~~,~~ to any person. Such easements may permit use of the land for purposes of access, convenience or necessity and such other right-of-way purposes as are customarily related to such easements. Such easements may be granted or conveyed by the board of regents or a designee without further legislative authorization but, before becoming operative, ~~must~~ *shall* be submitted to the attorney general for approval as to form. *If policies are promulgated by a state educational institution pursuant to section 1, and amendments thereto, concerning easements, the provisions of this subsection shall not apply to such state educational institution.*

(b) The state board of regents may designate the chief executive

officers of the state educational institutions to act on behalf of the state board in exercising the authority provided for the granting or conveying of right-of-way easements under subsection (a).

(c) *Except as provided further,* the provisions of K.S.A. 75-2132, 75-2133 and 75-2134, and amendments ~~of such sections~~ *thereto*, apply to the granting or conveying of easements under authority of this section. *The provisions of K.S.A. 75-2132, and amendments thereto, shall not apply to a state educational institution if policies concerning easements are promulgated by such state educational institution pursuant to section 1, and amendments thereto.*

Sec. 3. K.S.A. 75-1251 is hereby amended to read as follows: 75-1251. As used in K.S.A. 75-1250 through 75-1267, and amendments thereto, unless the context otherwise requires, the following terms shall be defined as follows:

(a) "Firm" means any individual, firm, partnership, corporation, association, or other legal entity that is permitted by law to practice the profession of architecture, engineering or land surveying.

(b) "Negotiating committee" means a committee to negotiate as provided in this act~~,~~ and consisting of the following members:

(1) The head of the state agency for which the proposed project is planned or of the state agency that controls and supervises the operation and management of the institution for which the proposed project is planned, if such is the case, or a person designated by the head of the agency;

(2) the head of the institution for which the proposed project is planned, or a person designated by the head of the institution. When the proposed project is not planned for an institution, the state agency head shall designate a second person in lieu of the head of an institution; and

(3) the secretary of administration, or a person designated by the secretary, who shall act as chairperson of the committee.

(c) "Architectural services" means any of the following:

(1) The practice of architecture, as defined in K.S.A. 74-7003, and amendments thereto;

(2) the practice of landscape architecture, as defined in K.S.A. 74-7003, and amendments thereto; and

(3) interior design services.

(d) "Project architect, engineer or land surveyor" means a firm employed under K.S.A. 75-1250 through 75-1267, and amendments thereto, for a particular project.

(e) "State building advisory commission" means the state building advisory commission created by K.S.A. 75-3780, and amendments thereto, or any duly authorized officer or employee of such commission.

(f) *(1)* "State agency" ~~includes~~ *means, except as otherwise provided*

in paragraph (2), any state institution.

(2) "State agency" does not include any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

(g) "Engineering services" means ~~those~~ services described as the ~~"~~practice of engineering~~,"~~ as defined in K.S.A. 74-7003, and amendments thereto, as related to building construction ~~defined in this section~~.

(h) "Land surveying" means ~~those~~ services described as ~~"~~professional surveying~~,"~~ as defined in K.S.A. 74-7003, and amendments thereto, as related to building construction ~~defined in this section~~.

(i) "Agency head" means the chief administrative officer of a state agency, as the term is defined in ~~subsection (3) of~~ K.S.A. 75-3701*(3)*, and amendments thereto~~, but shall~~. *"Agency head" does* not include the chief administrative officer of any state institution.

(j) "Building construction" means furnishing and utilizing labor, equipment, materials or supplies used or consumed for the construction, alteration, renovation, repair or maintenance of a building or structure. *"*Building construction*"* does not include highways, roads, bridges, dams, turnpikes or related structures, including, but not limited to, rest areas and visitor centers or stand-alone parking lots.

Sec. 4. K.S.A. 75-2131 is hereby amended to read as follows: 75-2131. *(a)* Any agency head, as defined in K.S.A. 75-3208, and amendments thereto, or the governing body of any state board or agency having custody and control of any land belonging to the state of Kansas, with or without receiving consideration therefor, may grant or convey right-of-way easements across, over, upon or under any such state land to any municipal corporation, quasi-municipal corporation, the secretary of transportation or to any person, firm or corporation owning or operating any public utility. Such easements may include rights for municipal parking, playground or other municipal uses and rights of ingress or egress for the purpose of constructing, maintaining or removing any pipeline, power line, sewer or other public utility installation or any equipment or appurtenances necessary to the operation thereof. Any such easement, before becoming operative, shall be submitted to the attorney general for approval as to form.

(b) This section shall not apply to any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

Sec. 5. K.S.A. 75-3729 is hereby amended to read as follows: 75-3729. *(a)* The director of accounts and reports shall design, devise and direct the use of inventory records by all state agencies to show all fixed and movable property of the state. The records shall be based on a physical inventory~~ and shall be~~*,* charged with all subsequent purchases,

manufacture of property or other methods of acquisition and ~~shall be~~ reduced by all property traded in, condemned or otherwise disposed of. The accuracy of such property record shall be verified periodically by actual inspection of such property by the state agency and ~~shall be~~ verified periodically by the division of accounts and reports. The state agencies may be required to take physical inventory of such properties annually and at such other times as the director of accounts and reports may direct.

(b) This section shall not apply to any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

Sec. 6. K.S.A. 75-3731a is hereby amended to read as follows: 75-3731a. *(a)* Subject to the approval of the secretary of administration, the director of accounts and reports may prescribe limitations and procedures relating to expenditures for official hospitality by agencies within the executive branch of state government.

(b) This section shall not apply to any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

Sec. 7. K.S.A. 75-3743 is hereby amended to read as follows: 75-3743. *(a)* Whenever the secretary of administration or any division head of the department of administration shall so require, certain specified contracts and leases of any state agency shall be approved as to form or execution by the attorney general. All orders or requisitions for supplies, materials and equipment shall be made on forms prescribed by the director of accounts and reports, unless a purchase order is required for each payment against a contract.

(b) This section shall not apply to any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

Sec. 8. K.S.A. 75-3744 is hereby amended to read as follows: 75-3744. *(a)* Except as otherwise provided in this act and rules and regulations adopted thereunder:

~~(a)~~*(1)* Every contract subject to the approval of the attorney general shall be signed by the administrative head of the affected state agency. No such contract shall be valid or effective without the approval and signature of the director of purchases.

~~(b)~~*(2)* All other purchase orders and contracts issued or entered into by the division of purchases shall be signed by the director of purchases. Such purchase orders shall show on their face that an appropriation fund or allotment has been encumbered for the full amount of the liability.

(b) This section shall not apply to any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

Sec. 9. K.S.A. 75-37,115 is hereby amended to read as follows: 75-37,115. (a) There is hereby established the Kansas quality program within the department of administration for the purposes of providing procedures and incentives for the enhancement of quality in the business of state government. The secretary of administration shall administer the program and shall promote and assist the creation and development of Kansas quality teams in each state agency. The secretary of administration shall develop and coordinate appropriate training programs for state officers and employees in total quality management principles, which may include presentations by existing total quality management programs in firms and other organizations operating in Kansas.

(b) (1) The Kansas quality program shall be based on the principles of total quality management. The program shall provide opportunities for involvement of as many officers and employees of each state agency in Kansas quality teams as practicable to examine and improve the operations and activities of the state agency, except that no Kansas quality team shall be composed of more than 40 members unless specifically authorized by the secretary of administration. The Kansas quality program shall provide opportunities for individual quality improvement activities and recognition where such activities are determined to be more efficient and effective than establishing a Kansas quality team.

(2) In accordance with this section and with policies, procedures and guidelines prescribed by rules and regulations adopted by the secretary of administration, each state agency shall prepare a quality improvement plan containing proposed activities and quality goals for the state agency during a specified fiscal year or a portion thereof. Each quality improvement plan shall include comprehensive goals and specific goals for individual achievement or team achievement, shall be based on performance standards and other objective measures and shall be submitted for review and approval by the secretary of administration. All performance standards and other objective measures shall be stated in terms of quantitative measures in accordance with rules and regulations adopted by the secretary of administration under this section.

(c) The secretary of administration shall adopt rules and regulations for the administration and implementation of the Kansas quality program.

(d) As used in this section, "state agency" ~~has the meaning ascribed thereto by~~ *means the same as defined in* K.S.A. 75-3701, and amendments thereto*, except that "state agency" does not include any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto*.

Sec. 10. K.S.A. 75-5802 is hereby amended to read as follows: 75-5802. As used in this act ~~unless the context specifically requires otherwise~~:

(a) "Firm" means any individual, firm, partnership, corporation,

association, or other legal entity permitted by law to practice the profession of engineering and provide engineering services or practice the profession of land surveying and provide land surveying services.

(b) "Engineering services" means ~~those~~ services described as the ~~"~~practice of engineering~~,"~~ as defined in K.S.A. 74-7003, and amendments thereto.

(c) "Land surveying" means ~~those~~ services described as ~~"~~professional surveying~~,"~~ as defined in K.S.A. 74-7003, and amendments thereto.

(d) "Agency head" means the chief administrative officer of a state agency, as that term is defined in ~~subsection (3) of~~ K.S.A. 75-3701*(3)*, and amendments thereto~~, but shall~~. *"Agency head" does* not include the chief administrative officer of any state institution.

(e) "Negotiating committee" means a committee designated to negotiate as provided in this act~~,~~ and consisting of:

(1) The agency head of the state agency for which the proposed project is planned~~,~~ or a person designated by such agency head;

(2) the secretary of administration~~,~~ or a person designated by such secretary; and

(3) the chief administrative officer of the state institution for which the proposed project is planned~~,~~ or, when the proposed project is not planned for a state institution, the agency head shall designate a second person in lieu of the chief administrative officer of a state institution.

(f) "Project" means any capital improvement project or any study, plan, survey or program activity of a state agency, including development of new or existing programs and preparation of federal grant applications.

(g) "State building advisory commission" means the state building advisory commission created by K.S.A. 75-3780, and amendments thereto, or any duly authorized officer or employee of such commission.

(h) "State agency" means the same as defined in K.S.A. 75-3701, and amendments thereto, except that "state agency" does not include any state educational institution if policies are promulgated by such state educational institution pursuant to section 1, and amendments thereto.

Sec. 11. K.S.A. 75-6606 is hereby amended to read as follows: 75-6606. (a) Except as provided in subsection (b) and K.S.A. 75-6612 and 75-6613, and amendments thereto, all sales, trade-ins or other disposition of personal property owned by state agencies shall be made in accordance with the state surplus property act and rules and regulations authorized by such act.

(b) Subject to rules and regulations adopted pursuant to the state surplus property act or as otherwise directed by the governor, state agencies may transfer or loan personal property to other state agencies with or without charging a fee therefor. In accordance with procedures prescribed by the director of purchases, a state agency may trade in

personal property in conjunction with a purchase by the state agency. The state agency shall give the secretary of administration or a designee of the secretary notice of the proposed trade-in. The secretary of administration or the secretary's designee may elect to provide for disposition of the property under the surplus property program in lieu of permitting the state agency to trade in the property.

(c) A state educational institution as defined in K.S.A. 76-711, and amendments thereto, shall not be required to sell, ~~trade-in~~ *trade in* or dispose of personal property owned by such institution as required by the state surplus property act or any rules and regulations adopted pursuant thereto. A state educational institution shall sell, ~~trade-in~~ *trade in* or dispose of such personal property in accordance with policies adopted by the state board of regents *or policies promulgated by the state educational institution pursuant to section 1, and amendments thereto*.

Sec. 12. K.S.A. 76-769 is hereby amended to read as follows: 76-769. (a) As used in this section:

(1) "State educational institution" means any state educational institution as defined in K.S.A. 76-711, and amendments thereto.

(2) "Professional services" means professional services as defined in K.S.A. 75-37,131, and amendments thereto.

(3) "State board" means the state board of regents.

(4) (A) "Services" means any professional services or other contractual services.

(B) "Services" does not mean architectural services, engineering services, construction, construction management or ancillary technical services.

(5) "Municipality" means any political or taxing subdivision of the state and any agency or instrumentality of a political or taxing subdivision of the state.

(6) "Lease of real property" means:

(A) Any agreement to lease real property:

(1) Between a state educational institution and one or more of its affiliated corporations;

(2) between a state educational institution and a municipality;

(3) between a state educational institution and any other party for vacant space that is less than 10,000 square feet; or

(4) between a state educational institution and any other party for a term not to exceed 24 months.

(B) "Lease of real property" includes any agreement to lease real property from a state educational institution and any agreement to lease real property to a state educational institution.

(b) Any supplies, materials, equipment, goods, property, printing or services may be acquired by a state educational institution, and any lease

of real property may be entered into by a state educational institution. Any such acquisition or lease shall be in accordance with policies adopted by the state board *or policies promulgated by any state educational institution pursuant to section 1, and amendments thereto,* and shall not be subject to K.S.A. 75-1005, 75-3737a through 75-3741b, 75-3742 through 75-3744 and 75-37,130 through 75-37,134, and amendments thereto, or any rules and regulations or policies adopted thereunder. Nothing in this subsection shall be construed as prohibiting a state educational institution from using contracts established or services offered by the director of purchases.

(c) The acquisition of any articles or products produced by inmates in the custody of the secretary of corrections that may be required by a state educational institution may be acquired in accordance with policies adopted by the state board *or policies promulgated by any state educational institution pursuant to section 1, and amendments thereto*. Any such acquisition shall not be subject to the provisions of the prison-made goods act of Kansas requiring any such acquisition to be made from the secretary of corrections as provided in K.S.A. 75-5273 through 75-5282, and amendments thereto, or any rules and regulations or policies adopted thereunder.

New Sec. 13. The provisions of this act are declared severable. Any provision of this act or the application thereof to any person or circumstance that is held to be unconstitutional or invalid shall not affect the validity of any remaining provisions of this act or the applicability of such provisions to any person or circumstance.

Sec. 14. K.S.A. 74-3264, 75-1251, 75-2131, 75-3729, 75-3731a, 75-3743, 75-3744, 75-37,115, 75-5802, 75-6606 and 76-769 are hereby repealed.

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