

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Government Efficiency** recommends **SB 115** be amended on page 1, by striking all in lines 5 through 7 and inserting the following:

"New Section 1. (a) The legislature finds that performance measures are an important management tool that has been utilized by state agencies for numerous years.

(b) The legislature finds that the use of quantifiable performance measures can be used by the governor and the legislature to assess the effectiveness over time of programs and actions of each state agency.

New Sec. 2. As used in sections 1 through 3, and amendments thereto:

(a) "State agency" shall be defined as set forth in K.S.A. 75-3049, and amendments thereto, except that the university of Kansas hospital authority shall not be included in such definition for the purposes of sections 1 through 3, and amendments thereto; and

(b) "performance measures" means a quantitative or qualitative indicator used to assess state agency performance, including outcome and output indicators.

New Sec. 3. (a) Each state agency shall consult with a representative of the department of legislative research and the director of the budget or the director's designee to modify each agency's performance measures to standardize those performance measures and to utilize best practices across all state agencies.

(b) On or before October 1 of each year, each state agency shall submit an annual report based on those performance measures to the legislative budget committees, the director of the budget and the secretary of administration.

(c) The required reports in subsection (b) sent to the department of administration shall be posted on the website created pursuant to K.S.A. 2010 Supp. 74-72,123, and amendments thereto.

New Sec. 4. Sections 1 through 3, and amendments thereto, shall be part of and supplemental to article 30 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 5. K.S.A. 2010 Supp. 74-72,123 is hereby amended to read as follows: 74-72,123. (a) As used in the Kansas taxpayer transparency act:

(1) "Searchable website" means a website that allows the public to search and aggregate the information identified in subsection (b) including requirements that the website offer the public the ability to efficiently search and display data, and ascertain the total amounts of revenues and expenditures (A) of funds established within the state treasury in an aggregate or summary form in a manner determined by the secretary of administration, (B) of compensation paid to public employees employed by state agencies, and (C) of bond debt as specified in this act.

(2) "Agency" means any entity or instrumentality of the state of Kansas as defined in K.S.A. 75-3701, and amendments thereto, and any other entity or instrumentality delegated statutory authority by the legislature to issue bonds and to collect revenue for the purpose of repaying bonds issued under authority delegated by statute.

(3) "Board" means the public finance transparency board.

(b) No later than March 1, 2009, the secretary of administration shall develop and operate a single, searchable website accessible by the public at no cost to access, that includes:

(1) Annual expenditures, as determined by the secretary of administration and as available within the central accounting system and state payroll system, shall include, but not be limited to:

(A) Disbursements by any state agency from funds established within the state treasury;

(B) bond debt payments;

(C) salaries and wages including, but not limited to, compensation paid to individual employees

of state agencies;

(D) contractual services including, but not limited to, amounts paid to individual vendors;

(E) commodities including, but not limited to, amounts paid to individual vendors;

(F) capital outlay including, but not limited to, amounts paid to individual vendors;

(G) debt service including, but not limited to, amounts of bond interest paid and sources of funds paid for individual bond issues;

(H) aid to local units including, but not limited to, amounts paid to individual units of government for individually identifiable aid programs;

(I) other assistance and benefits;

(J) capital improvements including, but not limited to, amounts of bond principal paid and sources of funds paid for individual bond issues; and

(K) tax expenditures as reported by the secretary of revenue in the annual tax expenditure report.

(2) Annual revenues, as determined by the secretary of administration and as available within the central accounting system, shall include, but not be limited to:

(A) Receipts or deposits by any state agency into funds established within the state treasury;

(B) taxes including, but not limited to, compulsory contributions imposed by the state for the purpose of financing services;

(C) agency earnings including, but not limited to, amounts collected by each agency for merchandise sold, services performed, licenses and permits issued, or regulation;

(D) revenue for the use of money and property including, but not limited to, amounts received for compensation for the use of state-owned money and property;

(E) gifts, donations and federal grants including, but not limited to, amounts received from public and private entities to aid in support of a specific function or other governmental activity;

(F) other revenue including, but not limited to, receipts not classified elsewhere; and

(G) non-revenue receipts including, but not limited to, all receipts that do not constitute revenue.

(3) Annual bonded indebtedness which shall include, but not be limited to the amount of the total original obligation stated in terms of principal and interest, the term of the obligation, the source of funding for repayment of the obligation, the amounts of principal and interest previously paid to reduce the obligation, the balance remaining of the obligation, any refinancing of the obligation, and the cited statutory authority to issue such bonds.

(4) The annual performance measures report of each state agency as required pursuant to section 3, and amendments thereto.

~~(4)~~ (5) Any other relevant information specified by the secretary of administration after consulting with and seeking the advice of the public finance transparency board as established in K.S.A. 2010 Supp. 74-72,124, and amendments thereto.

(c) The single website provided for in subsection (b) of this section shall include data for fiscal year 2003 and each fiscal year thereafter. The website shall be designed so that such data shall be retained on the single website for not less than 10 years and shall include data for the most recent fiscal years. Data that is available in the central accounting system and state payroll system shall be on the single website as soon as possible, but not later than 45 days after the last day of the preceding fiscal year. The secretary of administration shall develop policies and procedures to make data available from any other source. Nothing in this act shall require the secretary of administration to provide information on the website that is not available in the central accounting system and the state payroll system at the time of initial implementation of the website. After implementation of the initial website, the public finance transparency board shall advise the secretary of administration on incorporating additional information described by this act from any other source of information available to the secretary of administration including information submitted by state agencies pursuant to subsection (d) of this section.

(d) Any state agency shall provide, at the request of the secretary of administration, such information as is necessary to accomplish the purposes of this act.

(e) Nothing in this act shall permit or require the disclosure of information which is considered confidential by state or federal law.

Sec. 6. K.S.A. 75-3715 is hereby amended to read as follows: 75-3715. The director of the budget shall:

(a) Keep in continuous touch with the operations, plans and needs of state agencies, and with the sources and amounts of revenue and other receipts of the state;

(b) analyze the quantity and quality of services rendered by each agency, and the needs for such services and for any new services;

(c) prepare under the supervision of the incoming governor, the budget report for submission to the legislature;

(d) prepare a legislative measure or measures reflecting the incoming governor's budget;

(e) consider and act on applications for transfers between appropriations of the same agency as provided by law;

(f) survey such work programs and periodical allotment requests submitted by state agencies as are required by this act;

(g) report to the governor and to the incoming governor on the operation of the budget system and advise and assist the governor, incoming governor, state finance council, legislature and its ways and means and appropriations committees on request, concerning any matters relating to the budget;
~~and~~

(h) provide management analysis service to state agencies;

(i) consult with each state agency and a representative of the legislative research department to modify each agency's performance measures to standardize those performance measures and to utilize

best practices across all state agencies.

Sec. 7. K.S.A. 75-3716 is hereby amended to read as follows: 75-3716. The director of the budget shall prepare the budget report, with the related legislative measure or measures, for the incoming governor's approval and submission to the legislature. The director of the budget shall, on or before September ~~first~~ 1 of each year, furnish to every state agency or person authorized to spend or receive state funds a sufficient number of budget estimate forms. The forms shall be prepared by the director of the budget and shall be so designed as to show actual expenditures for at least the last preceding completed fiscal year, estimated expenditures for the current fiscal year, and requests for each succeeding fiscal year, and data for like periods with respect to receipts and actual or estimated balances at the end of such fiscal years.

The director of the budget may require the estimated expenditures to be classified so as to set forth the data by funds, state agencies, character and objects of expenditures, which expenditures may also be required to be classified by functions and activities. The director of the budget may require the revenue estimates to show the basis upon which the estimates were made and the factors involved in the same, and to be classified so as to show receipts by funds, and sources and types of income. The director of the budget may require such further detail, work programs, supplemental and supporting data, and such information as may be necessary to carry out the provisions of this act.

The director shall also consider the annual performance measures reports submitted to the director pursuant to section 3, and amendments thereto.

New Sec. 8. Sections 8 through 22, and amendments thereto, shall be known and may be cited as the Kansas advisory council on privatization and public-private partnerships act.

New Sec. 9. (a) For the purposes of sections 1 through 4, and amendments thereto, 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 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.

New Sec. 10. As used in sections 8 through 22, 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, including the board of regents and any postsecondary educational institution, of this state. The term shall not include any political subdivision of the state, municipality or other unit of local government.

New Sec. 11. (a) There is hereby created a body politic and corporate to be known as the Kansas advisory council on privatization and public-private partnerships. The 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 the Kansas advisory council on privatization and public-private partnerships 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.

New Sec. 12. In order to achieve its purpose as provided in the Kansas advisory council on privatization and public-private partnerships act, the council 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 the

Kansas advisory council on privatization and public-private partnerships 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 the Kansas advisory council on privatization and public-private partnerships 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.

New Sec. 13. 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.

New Sec. 14. 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.

New Sec. 15. 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.

New Sec. 16. (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 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.

New Sec. 17. (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 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 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, 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.

New Sec. 18. (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 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.

New Sec. 19. The provisions of sections 16 through 18, 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.

New Sec. 20. The provisions of the Kansas advisory council on privatization and public-private partnerships act shall only apply to state agencies that receive state appropriations, state general funds or federal funds appropriated through the state.

New Sec. 21. If any provision of sections 8 through 22, 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 8 through 22, and amendments thereto, are declared to be severable.

New Sec. 22. The provisions of sections 8 through 22, and amendments thereto, shall expire on

July 1, 2014.

Sec. 23. K.S.A. 75-3715, 75-3716, 75-5002 and 75-5003 and K.S.A. 2010 Supp. 74-72,123 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its publication in the statute book.";

On page 1, in the title, in line 1 by striking all after "An ACT"; and inserting "concerning state agencies and other public bodies; amending K.S.A. 75-3715 and 75-3716 and K.S.A. 2010 Supp. 74-72,123 and repealing the existing sections; repealing K.S.A. 75-5002 and 75-5003."; and by striking all in line 2.

And the bill be passed as amended.

_____ Chairperson