

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:

32 (1) To ensure that each state agency focuses on its core mission,  
33 and delivers goods and services effectively and efficiently by

1 leveraging resources and contracting with private business suppliers or  
2 not-for-profit organizations if those entities can more effectively and  
3 efficiently provide such goods and services thereby reducing the cost of  
4 government while expanding those services to the greatest number of  
5 citizens;

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

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

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

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

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

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

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

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

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

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

- 1 (1) One member, who shall be either the lieutenant governor or the  
2 chief executive of a state agency, who shall be appointed by the  
3 governor;
- 4 (2) two members, who shall be engaged in private business and are  
5 not members of the legislature, appointed by the governor;
- 6 (3) three members, who shall be engaged in private business and  
7 only one of whom may be a member of the legislature, appointed by  
8 the president of the senate;
- 9 (4) 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 speaker of the house of representatives;
- 12 (5) one member, who shall be engaged in private business and who  
13 shall not be a member of the legislature, appointed by the minority  
14 leader of the senate; and
- 15 (6) 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 house of representatives.
- 18 (c) Members shall be subject to confirmation by the senate as  
19 provided in K.S.A. 75-4315b, and amendments thereto. Except as  
20 provided by K.S.A. 46-2601, and amendments thereto, no person  
21 appointed to the council shall exercise any power, duty or function as a  
22 member of the council until confirmed by the senate.
- 23 (d) Members shall serve for a term of two years. Terms of  
24 members appointed pursuant to this section shall expire on March 15.  
25 In the case of the member who is a state official, such member shall  
26 serve for a term of two years, or until such member ceases to hold  
27 public office, whichever occurs first. Members shall serve until a  
28 successor is appointed and confirmed.
- 29 (e) After the expiration of a member's term, or whenever a  
30 vacancy occurs a member shall be appointed as described in subsection  
31 (a). In the event of a vacancy the appointment shall be for the  
32 remainder of the unexpired portion of the term. Any member is eligible  
33 for reappointment for successive two-year terms.
- 34 (f) No member shall appoint a designee to serve in such member's  
35 place on the council.
- 36 (g) The council shall annually elect a member as chairperson. The  
37 member appointed pursuant to paragraph (a)(1) and any member who is  
38 a member of the legislature is not eligible to serve as chairperson.
- 39 (h) The council shall meet at least four times a year at the call of

1 the chairperson. A quorum shall consist of a majority of the members of  
2 the council.

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

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

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

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

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

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

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

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

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

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

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

39 (c) The council shall annually prepare and submit a report to the

1 governor, the committee on ways and means of the senate and the  
2 committee on appropriations of the house of representatives. The report  
3 shall be submitted no later than January 15, and shall contain details of  
4 the council's activities for the immediately preceding year and include  
5 the following:

6 (1) Recommendations on methods of delivering government  
7 services that would improve the efficiency, effectiveness and delivery  
8 of government services;

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

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

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

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

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

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

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

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

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

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

36 (2) an analysis comparing the potential costs and savings to the  
37 agency between outsourcing the activity and continuing to perform  
38 such activity;

39 (3) a citation to existing legal authority for outsourcing such

- 1 activity;
- 2 (4) a transition plan that addresses changes in personnel,  
3 equipment, office location and communication with clients and the  
4 general public should such activity be outsourced;
- 5 (5) a description of any legislative action necessary to accomplish  
6 the outsourcing of such activity; and
- 7 (6) a description of specific performance standards that a  
8 contractor must meet in performing such activity, including:
- 9 (A) Specific and measurable goals to be met by the contractor;
- 10 (B) a plan to ensure compliance by the contractor with all  
11 applicable laws and regulations; and
- 12 (C) a contingency plan addressing the contractor's  
13 nonperformance or inadequate performance of such activity.
- 14 (d) If the business case is submitted by an entity other than a state  
15 agency, the council shall send a copy of the submitted business case to  
16 the state agency currently performing the activity in question. The state  
17 agency shall have 30 days from receipt of the business case to submit a  
18 response to the council. The response shall include those items set forth  
19 in subsection (c).
- 20 (e) The council may review and evaluate any business case that is  
21 submitted to the council to determine: (1) If there is competition,  
22 replication or duplication of an activity by a state agency with a private  
23 business, not-for-profit organization or other government entity; (2)  
24 whether such activity may be outsourced such state agency; and (3) the  
25 costs and savings that will likely result from such outsourcing.
- 26 (f) In conducting its review and evaluation of a business case the  
27 council shall consider the state agency's response submitted pursuant to  
28 subsection (d), if applicable, and determine whether the activity in  
29 question is an inherent governmental function that cannot be  
30 outsourced, or a commercial activity which may be performed by an  
31 entity other than the state agency. The council may hold public  
32 hearings, seek advice from advisory groups and request additional  
33 information from the state agency.
- 34 (g) Any member of the council that is either employed by the state  
35 agency which is performing the activity that is the subject of a business  
36 case under review, or is affiliated with a private business or not-for-  
37 profit organization that could perform such activity shall not participate  
38 in the review and evaluation of that particular business case.
- 39 (h) Upon completion of its review and evaluation the council shall

1 prepare a report on its findings and recommendations. Copies of the  
2 council's final report on a business case shall be sent to the entity that  
3 initially submitted the business case, and the state agency which  
4 performs the activity that is the subject of the business case.

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

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

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

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

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

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

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

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

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

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

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

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

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



1 department of administration.

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

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

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

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

36 (b) On or before January 12, the director of purchasing of the  
37 department of administration shall transmit to the standing committee  
38 on appropriations of the house of representatives, the standing  
39 committee on ways and means of the senate and the ~~council on efficient~~

1 ~~government~~ **Kansas advisory council on privatization and public-**  
2 **private partnerships** a report that shall include all written explanations  
3 prepared in accordance with this section during the immediately  
4 preceding year.

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

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

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

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

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

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

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

33