

House Substitute for SENATE BILL No. 249

By Committee on Appropriations

3-10

1 AN ACT concerning the authority of state agencies to enter into
2 indebtedness on behalf of the state; relating to the issuance of bonds by
3 the Kansas development finance authority; monthly reports by the
4 authority; amending K.S.A. 74-8913 and K.S.A. 2015 Supp. 74-8905
5 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. (a) On and after the effective date of this act, no state
9 agency, any affiliated corporate entity of a state agency or other corporate
10 entity created by a state agency shall enter into the following actions
11 unless such action has first been specifically authorized for such purposes
12 by an appropriation or other act of the legislature or has been approved by
13 the state finance council subject to the provisions of subsection (b), acting
14 on this matter which is hereby characterized as a matter of legislative
15 delegation and subject to the guidelines prescribed in K.S.A. 75-3711c(c),
16 and amendments thereto, except that such approval also may be given
17 while the legislature is in session:

18 (1) Borrow money upon the credit of the state;

19 (2) contract any indebtedness on the credit of the state. Such
20 indebtedness shall not include accounts payable and purchases using a
21 credit card if such indebtedness is paid within 90 days of the date such
22 indebtedness was entered into;

23 (3) issue bonds;

24 (4) acquire real estate by purchase, gift, devise or bequest, if such
25 acquisition is involved in a public-private partnership between a state
26 agency and any affiliated corporate entity of a state agency or other
27 corporate entity created by a state agency;

28 (5) contract with a third party to maintain, construct or improve any
29 institution or facility on state-owned property in any way if such contract
30 is in an amount that is equal to or exceeds \$2,000,000;

31 (6) make expenditures for maintenance, construction or
32 improvements for any institutions or facilities of such state agency in any
33 way if such expenditure is in an amount that is equal to or exceeds
34 \$2,000,000;

35 (7) pledge as collateral of any type any state-owned institution,
36 facility or property;

1 (8) enter into an agreement or assignment in which the rent payments
2 are pledged as collateral;

3 (9) enter into or assume any lease obligation in which the annual
4 liability is in an amount that is equal to or exceeds \$1,000,000 or the term
5 of such lease is greater than five years; or

6 (10) enter into any lease agreement which leases state-owned or
7 managed property to any private entity at a price that is less than fair
8 market value.

9 (b) (1) The state finance council may approve any action described in
10 subsection (a) if the total cost of such action is:

11 (A) Equal to or less than \$5,000,000; or

12 (B) more than \$5,000,000 but less than \$25,000,000 and the state
13 agency sends a certification describing the action to the state building
14 advisory commission and the joint committee on state building
15 construction more than 30 days prior to the request for the approval of the
16 state finance council, and neither the state building advisory commission
17 nor the joint committee on state building construction has scheduled a
18 meeting to consider such action. If such commission or committee has
19 scheduled a meeting to consider such action, the state agency shall not
20 request approval of such action by the state finance council until after such
21 meeting.

22 (2) The state finance council shall not have the authority to approve
23 any action described in subsection (a) that is equal to or exceeds
24 \$25,000,000. Any such action that is equal to or exceeds \$25,000,000 shall
25 be approved by an appropriation or other act of the legislature.

26 (3) The state finance council shall schedule a meeting to consider any
27 approval required by this section within 30 days of request.

28 (4) The state finance council shall approve any gift, devise or bequest
29 of real estate if such acquisition is in the best interest of the state.

30 (c) The dollar amounts established in this section shall be interpreted
31 as applying to the entirety of the costs of any single maintenance,
32 construction or improvement project, including concurrent phases of such
33 maintenance, construction or improvement project. No agency shall
34 subvert the provisions of this section by dividing such projects into smaller
35 projects in order to avoid the approvals required by this section.

36 (d) As used in this section, "state agency" means any state office or
37 officer, department, board, commission, institution, bureau or any other
38 state authority which may lawfully request a state appropriation.

39 (e) The provisions of this section shall not apply to:

40 (1) The department of transportation's authority pursuant to K.S.A.
41 68-2320 or 68-2328, and amendments thereto, or to any other existing
42 statutory grant of authority to the department of transportation.

43 (2) The authority granted to the university of Kansas hospital

1 authority pursuant to K.S.A. 76-3308 or 76-3312, and amendments
2 thereto.

3 (3) State agency information technology projects.

4 (4) Routine maintenance performed by a state agency, any affiliated
5 corporate entity of a state agency or other corporate entity created by a
6 state agency on any state-owned institution, facility or property.

7 (5) A state agency refinancing debt, if such refinancing results in a
8 decrease of the total debt liability of the state, including all interest
9 expenses of such refinancing.

10 (6) The department of labor's authority pursuant to K.S.A. 44-712,
11 and amendments thereto.

12 (7) Any financial services contract entered into pursuant to K.S.A.
13 75-3799, and amendments thereto, including services relating to
14 installment purchase, lease, or lease-purchase of equipment, if such
15 contract is in an amount that is less than \$1,000,000.

16 (8) A state agency which is leasing real estate for a special event if
17 such lease is for less than one year in duration.

18 New Sec. 2. (a) There is hereby created the commission on public-
19 private partnership building projects. The commission shall review the
20 following and make recommendations that the commission deems
21 appropriate to the legislature:

22 (1) If and when public-private partnership building projects are
23 appropriate;

24 (2) the selection process used for advertising and awarding a public-
25 private partnership building project;

26 (3) the limitations or minimum financial participation of any parties
27 involved with public-private partnership building projects;

28 (4) the provisions of section 1, and amendments thereto;

29 (5) any other areas of study regarding public-private partnership
30 building projects that the commission deems appropriate; and

31 (6) if and when a project scope would be competing with the private
32 sector.

33 (b) The commission shall have 11 members. Each of the following
34 shall be a member: An appointee of the board of regents, an appointee of
35 the associated general contractors of Kansas, the chairperson of the senate
36 committee on ways and means, the chairperson of the house appropriations
37 committee, a member of the house of representatives appointed by the
38 speaker of the house of representatives, a member of the house of
39 representatives appointed by the minority leader of the house of
40 representatives, a member of the senate appointed by the president of the
41 senate, a member of the senate appointed by the minority leader of the
42 senate, an appointee of the governor, an appointee of the American
43 institute of architects and an appointee of the department of administration.

1 (c) After adjournment sine die of the 2016 regular session of the
2 legislature, the commission shall meet to organize. The chairperson and
3 vice-chairperson shall be appointed by the speaker of the house of
4 representatives and the president of the senate and shall be members of
5 different houses of the legislature.

6 (d) On or before December 31, 2016, the commission shall produce a
7 report which shall contain recommendations for any legislative or
8 executive act that the commission deems necessary regarding public-
9 private partnership building projects.

10 Sec. 3. K.S.A. 2015 Supp. 74-8905 is hereby amended to read as
11 follows: 74-8905. (a) The authority may issue bonds, either for a specific
12 activity or on a pooled basis for a series of related or unrelated activities or
13 projects duly authorized by a political subdivision or group of political
14 subdivisions of the state in amounts determined by the authority for the
15 purpose of financing projects of statewide as well as local importance,
16 capital improvement facilities, educational facilities, health care facilities
17 and housing developments. Nothing in this act shall be construed to
18 authorize the authority to issue bonds or use the proceeds thereof to:

19 (1) Purchase, condemn or otherwise acquire a utility plant or
20 distribution system owned or operated by a regulated public utility;

21 (2) finance any capital improvement facilities or educational facilities
22 which are being financed by the issuance of general obligation or utility
23 revenue bonds of a political subdivision, except that the acquisition by the
24 authority of general obligation or utility revenue bonds issued by political
25 subdivisions with the proceeds of pooled bonds shall not violate the
26 provisions of the foregoing; or

27 (3) purchase, acquire, construct, reconstruct, improve, equip, furnish,
28 repair, enlarge or remodel property for any swine production facility on
29 agricultural land which is owned, acquired, obtained or leased by a
30 corporation, limited liability company, limited partnership, corporate
31 partnership or trust.

32 Nothing in this subsection (a) shall prohibit the issuance of bonds by
33 the authority when any statute specifically authorizes the issuance of
34 bonds by the authority or approves any activity or project of a state agency
35 for purposes of authorizing any such issuance of bonds in accordance with
36 this section and provides an exemption from the provisions of this
37 subsection (a).

38 (b) The authority may issue bonds for activities and projects of state
39 agencies as requested by the secretary of administration. Research
40 facilities of state educational institutions shall be subject to the provisions
41 of this subsection (b). No bonds may be issued pursuant to this act for any
42 activity or project of a state agency unless the activity or project *has first*
43 either ~~has~~ been *specifically* approved by an appropriation or other act of

1 the legislature or ~~has~~ been *specifically* approved by the state finance
2 council acting on this matter which is hereby characterized as a matter of
3 legislative delegation and subject to the guidelines prescribed in ~~subsection~~
4 ~~(e)~~ of K.S.A. 75-3711c(c), and amendments thereto. *The authority shall*
5 *not issue bonds requested by the secretary of administration pursuant to*
6 *the powers in K.S.A. 75-3651, and amendments thereto.* When requested to
7 do so by the secretary of administration, the authority may issue bonds for
8 the purpose of refunding, whether at maturity or in advance of maturity,
9 any outstanding bonded indebtedness of any state agency. The revenues of
10 any state agency which are pledged as security for any bonds of such state
11 agency which are refunded by refunding bonds of the authority may be
12 pledged to the authority as security for the refunding bonds.

13 (c) The authority may issue bonds for the purpose of financing
14 industrial enterprises, transportation facilities, agricultural business
15 enterprises, educational facilities, health care facilities, housing
16 developments, research facilities or any combination of such facilities, or
17 any interest in facilities, including without limitation leasehold interests in
18 and mortgages on such facilities, whether located within or outside of
19 Kansas. The authority may additionally issue bonds for the purpose of
20 financing a hall of fame, museum or tourist destination of national
21 significance, as determined by the secretary of commerce. Such authority
22 to issue bonds for a hall of fame, museum or tourist destination of national
23 significance shall expire on December 31, 2007. No less than 30 days prior
24 to the issuance of any bonds authorized under this act with respect to any
25 project or activity within Kansas which is to be undertaken for the direct
26 benefit of any person or entity which is not a state agency or a political
27 subdivision, written notice of the intention of the authority to provide
28 financing and issue bonds therefor shall be given by the president of the
29 authority to the governing body of the city in which the project or activity
30 is to be located. If the project or activity is not proposed to be located
31 within a city, such notice shall be given to the governing body of the
32 county. No bonds for the financing of the project or activity shall be issued
33 by the authority for a one-year period if, within 15 days after the giving of
34 such notice, the governing body of the political subdivision in which the
35 project or activity within Kansas is proposed to be located shall have
36 adopted an ordinance or resolution stating express disapproval of the
37 project or activity and shall have notified the president of the authority of
38 such disapproval. The authority shall not issue bonds for the purpose of
39 financing a project or activity outside Kansas unless the authority has
40 determined that the issuance of such bonds provides a benefit to Kansas or
41 its people and that the owner or operator thereof or an affiliate has a
42 presence or impact in Kansas.

43 (d) The authority may issue bonds for the purpose of establishing and

1 funding one or more series of venture capital funds in such principal
2 amounts, at such interest rates, in such maturities, with such security, and
3 upon such other terms and in such manner as is approved by resolution of
4 the authority. The proceeds of such bonds not placed in a venture capital
5 fund or used to pay or reimburse organizational, offering and
6 administrative expenses and fees necessary to the issuance and sale of such
7 bonds shall be invested and reinvested in such securities and other
8 instruments as shall be provided in the resolution under which such bonds
9 are issued. Moneys in a venture capital fund shall be used to make venture
10 capital investments in new, expanding or developing businesses, including,
11 but not limited to, equity and debt securities, warrants, options and other
12 rights to acquire such securities, subject to the provisions of the resolution
13 of the authority. The authority shall establish an investment policy with
14 respect to the investment of the funds in a venture capital fund not
15 inconsistent with the purposes of this act. The authority shall enter into an
16 agreement with a management company experienced in venture capital
17 investments to manage and administer each venture capital fund upon
18 terms not inconsistent with the purposes of this act and such investment
19 policy. The authority may establish an advisory board to provide advice
20 and consulting assistance to the authority and the management company
21 with respect to the management and administration of each venture capital
22 fund and the establishment of its investment policy. All fees and expenses
23 incurred in the management and administration of a venture capital fund
24 not paid or reimbursed out of the proceeds of the bonds issued by the
25 authority shall be paid or reimbursed out of such venture capital fund.

26 (e) The authority may issue bonds in one or more series for the
27 purpose of financing a redevelopment plan project that is approved by the
28 authority in accordance with K.S.A. 74-8921 and 74-8922, and
29 amendments thereto, or by Johnson or Labette county in accordance with
30 the provisions of this act.

31 (f) After receiving and approving the feasibility study required
32 pursuant to K.S.A. 74-8936, and amendments thereto, the authority may
33 issue bonds in one or more series for the purpose of financing a multi-sport
34 athletic project in accordance with K.S.A. 74-8936 through 74-8938, and
35 amendments thereto. If the project is to be constructed in phases, a similar
36 feasibility study shall be performed prior to issuing bonds for the purpose
37 of financing each subsequent phase.

38 (g) The authority may issue bonds for the purpose of financing resort
39 facilities, as defined in ~~subsection (a) of~~ K.S.A. 32-867(a), and
40 amendments thereto, in an amount or amounts not to exceed \$30,000,000
41 for any one resort. The bonds and the interest thereon shall be payable
42 solely from revenues of the resort and shall not be deemed to be an
43 obligation or indebtedness of the state within the meaning of section 6 of

1 article 11 of the constitution of the state of Kansas. The authority may
2 contract with a subsidiary corporation formed pursuant to ~~subsection (v) of~~
3 K.S.A. 74-8904(v), and amendments thereto, or others to lease or operate
4 such resort. The provisions of K.S.A. 32-867, 32-868, 32-870 through 32-
5 873 and 32-874a through 32-874d, and amendments thereto, shall apply to
6 resorts and bonds issued pursuant to this subsection.

7 (h) The authority may use the proceeds of any bond issues herein
8 authorized, together with any other available funds, for venture capital
9 investments or for purchasing, leasing, constructing, restoring, renovating,
10 altering or repairing facilities as herein authorized, for making loans,
11 purchasing mortgages or security interests in loan participations and
12 paying all incidental expenses therewith, paying expenses of authorizing
13 and issuing the bonds, paying interest on the bonds until revenues thereof
14 are available in sufficient amounts, purchasing bond insurance or other
15 credit enhancements on the bonds, and funding such reserves as the
16 authority deems necessary and desirable. All moneys received by the
17 authority, other than moneys received by virtue of an appropriation, are
18 hereby specifically declared to be cash funds, restricted in their use and to
19 be used solely as provided herein. No moneys of the authority other than
20 moneys received by appropriation shall be deposited with the state
21 treasurer.

22 (i) Any time the authority is required to publish a notification
23 pursuant to the tax equity and fiscal responsibility act of 1982, the
24 authority shall further publish such notification in the Kansas register and
25 on the Kansas development finance authority website.

26 (j) Any time the authority issues private activity bonds, as defined in
27 K.S.A. 74-5059, and amendments thereto, pursuant to this section, the
28 authority shall publish notification of such issuance at least 14 days prior
29 to any bond hearing in the official county newspaper of the county in
30 which the project or activity financed by such bonds are located and in the
31 Kansas register.

32 Sec. 4. K.S.A. 74-8913 is hereby amended to read as follows: 74-
33 8913. (a) *On or before the 5th day of each month, the authority shall make*
34 *a monthly report of its activities for the preceding month to the members*
35 *of the state finance council and to the members of the joint committee on*
36 *state building construction. Such report shall contain information*
37 *pertaining to each financial transaction that the authority has entered into*
38 *or is in negotiations to enter into pursuant to the powers granted in K.S.A.*
39 *74-8904 or 74-8905, and amendments thereto, during the preceding*
40 *month.*

41 (b) On or before the last day of November in each year, the authority
42 shall make an annual report of its activities for the preceding fiscal year to
43 the governor and to the legislature. Such report shall contain an audit of

1 the preceding fiscal year, prepared by a firm of nationally recognized
2 certified public accountants. On or before the last day of November of
3 each year, the authority shall provide a written report to the governor and
4 the legislature with respect to all bonds of the authority issued during the
5 previous fiscal year, specifying the terms of sale and the costs, fees and
6 expenses of each such bond issue.

7 Sec. 5. K.S.A. 74-8913 and K.S.A. 2015 Supp. 74-8905 are hereby
8 repealed.

9 Sec. 6. This act shall take effect and be in force from and after its
10 publication in the Kansas register.