

Senate Substitute for HOUSE BILL No. 2201

AN ACT concerning transportation; relating to the Eisenhower legacy transportation program; decreasing the threshold amount required for alternate delivery projects; providing for the usage of federal stimulus funds for certain projects; calculating KDOT bonding and debt cap authority; amending K.S.A. 68-2320 and 68-2328 and K.S.A. 2020 Supp. 68-2314c, 68-2332 and 75-5094 and repealing the existing sections.

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

Section 1. K.S.A. 2020 Supp. 68-2314c is hereby amended to read as follows: 68-2314c. (a) In order to plan, develop and operate or coordinate the development and operation of the various modes and systems of transportation within the state, the secretary of transportation is hereby authorized and directed to initiate the Eisenhower legacy transportation program.

(b) (1) The Eisenhower legacy transportation program shall provide for the construction, improvement, reconstruction and maintenance of the state highway system. The program shall provide for the selection of projects that will allow for the flexibility to meet emerging and economic needs. Program expenditures may include, but may not be limited to, the following:

(A) Preservation projects to efficiently maintain a state highway system in its original or improved condition and in a state of good repair. The secretary shall establish targets for the state highway system condition that reflect the reasonable, realistic expectations that have historically existed in providing a safe and efficient state highway system. The secretary shall utilize reasonable, sound and accepted methods to determine the annual preservation investment needed to achieve the state targets and provide optimum cost effectiveness in keeping the long-term state highway system condition meeting such targets. It is the intent of the legislature that the secretary, prior to completion of the transportation program, shall spend or encumber from the state highway fund preservation projects in an amount equal to or exceeding 10 times the determined average annual preservation investment. The secretary shall manage cash-flow and project lettings such that there is reasonable assurance that preservation projects shall be fully funded each year. Pursuant to this subparagraph, preservation projects refer to maintenance, repairs or replacement of existing infrastructure. Federal funding from federal grants or federal stimulus may be used for preservation projects;

(B) preservation plus projects to efficiently maintain a state highway system and include additional safety or technology elements, or both, in the preservation project. Such additional elements may include, but may not be limited to, adding paved shoulders, adding passing lanes, adding traffic signals, adding intelligent transportation system elements or laying broadband fiber or the conduit for broadband fiber. It is the intent of the legislature that the secretary has the authority to enhance preservation plus projects with the addition of safety or technology improvements, or both. Federal funding from federal grants or federal stimulus may be used for preservation plus projects;

(C) expansion and economic opportunity projects, that include additions to the transportation system, or that improve access, relieve congestion and enhance economic development opportunities. The Kansas department of transportation shall develop and utilize criteria for the selection of expansion and economic opportunity projects. The selection criteria shall include, but shall not be limited to, engineering and traffic data, local consultation, geographic distribution and an economic impact analysis evaluation; and

(D) modernization projects that include improvements to the transportation system by widening lanes or shoulders, making geometric improvements, upgrading interchanges or building rail grade separations to improve the safety, condition or service of the highway system. The Kansas department of transportation shall develop and utilize criteria for the selection of modernization projects. The selection criteria shall include, but shall not be limited to, engineering data, local

consultation and geographic distribution.

(2) The department of transportation shall develop criteria for the incorporation of practical improvements into designs of the projects specified in this subsection.

(c) (1) Except as further provided, the Eisenhower legacy transportation program shall provide for the completion of modernization and expansion projects selected for construction under the transportation works for Kansas program pursuant to K.S.A. 68-2314b, and amendments thereto. Such projects shall be let prior to July 1, 2023. The secretary shall let to construction contract at least one phase of each remaining transportation works for Kansas program project before any new modernization or expansion project, or both, under the Eisenhower legacy transportation program are let to construction. A transportation works for Kansas program selected project in Harvey county generally described as an approximate one-mile reconstruction of the I-135 and 36th street interchange may not be constructed. If such project is not constructed, the estimated construction costs for such project shall be used on other construction projects in the Kansas department of transportation's south-central district.

(2) *Notwithstanding the provisions of paragraph (1), the secretary may let to construction at any time any modernization or expansion projects under the Eisenhower legacy transportation program that utilize federal stimulus funds regardless of whether transportation works for Kansas program projects, or any phase thereof, have been let. No moneys received from federal stimulus funds shall be expended pursuant to this paragraph unless the expenditure either has been approved by an appropriation or other act of the legislature or has been approved by the state finance council acting on this matter, which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in K.S.A. 75-3711c(c), and amendments thereto.*

(d) The Eisenhower legacy transportation program shall provide for assistance, including credit and credit enhancements, to cities and counties in meeting their responsibilities for the construction, improvement, reconstruction and maintenance of transportation improvements. Such programs may use criteria developed by the Kansas department of transportation for the incorporation of practical improvements into designs of projects. Expenditures under this subsection may include, but may not be limited to, the following:

(1) Apportionment of the special city and county highway fund to assist cities and counties with their responsibilities for roads and bridges not on the state highway system;

(2) programs to share federal aid with cities and counties to assist with their responsibilities for roads and bridges not on the state highway system;

(3) programs to assist cities with the maintenance of city connecting links as specified in K.S.A. 68-416, and amendments thereto, and local partnership programs to resurface or geometrically improve city connecting links or to promote economic development;

(4) programs similar to the Kansas department of transportation's local bridge improvement program to aid local public authorities in replacing or repairing bridges not on the state highway system;

(5) programs to assist cities and counties with railroad crossings of roads not on the state highway system; or

(6) programs that allow local governments to exchange federal aid funds for state funds.

(e) The Eisenhower legacy transportation program shall provide for a railroad program to provide assistance in accordance with K.S.A. 75-5040 through 75-5050, and amendments thereto, for the preservation and revitalization of rail service in the state.

(f) The Eisenhower legacy transportation program shall provide for an aviation program to provide assistance for the planning, constructing, reconstructing or rehabilitating the facilities of public use

general aviation airports, in accordance with K.S.A. 75-5061, and amendments thereto.

(g) The Eisenhower legacy transportation program shall provide for public transit programs to aid elderly persons, persons with disabilities and the general public, in accordance with K.S.A. 75-5032 through 75-5038 and 75-5051 through 75-5058, and amendments thereto.

(h) The Eisenhower legacy transportation program shall provide for a transportation technology program to provide for multimodal transportation-related projects that support innovative technology, in accordance with K.S.A. 2020 Supp. 75-5093, and amendments thereto.

(i) The Eisenhower legacy transportation program shall provide for a multimodal program to provide transportation improvement assistance for bike facilities, pedestrian facilities or other transportation-sensitive economic opportunities on a local or a regional basis.

(j) The Eisenhower legacy transportation program shall allow the secretary to award certain state highway system projects using alternative delivery procurement methods, other than an award of a design-bid-build, as provided for in K.S.A. 2020 Supp. 68-2332, and amendments thereto.

(k) The Eisenhower legacy transportation program shall provide for a broadband infrastructure construction program, in accordance with K.S.A. 2020 Supp. 75-5094, and amendments thereto.

(l) (1) State highway fund revenues that include, but are not limited to, motor fuel taxes, vehicle registrations, sales and compensating use taxes and eligible federal aid shall be used in the following order of priority:

- (A) To pay bond covenant obligations;
- (B) to pay for agency operations;
- (C) to make city connecting link payments authorized under K.S.A. 68-416, and amendments thereto; and
- (D) to pay for needed preservation projects as set forth in subsection (b)(1).

(2) Any such revenues not spent pursuant to subsection (l)(1)(A) through (D) may be used for other purposes and authority given to the secretary.

(3) All new bonds issued for the purposes of the Eisenhower legacy transportation program shall be paid using all state highway fund revenue, including revenue collected or received pursuant to K.S.A. 79-3620(c) and 79-3710(c), and amendments thereto.

(m) (1) The secretary shall, using the Kansas department of transportation selection methods and criteria, determine the projects to be selected for inclusion under the Eisenhower legacy transportation program. Consideration may be given to additional criteria that may include projects that:

- (A) Remove transportation infrastructure from the state highway system;
- (B) identify priority corridors;
- (C) include local monetary participation; or
- (D) reduce project size.

(2) (A) It is the intent of the legislature that the secretary shall develop a metric-driven process that determines a reasonable and fair minimum amount of state highway fund moneys to be spent on new modernization and expansion projects in each of the Kansas department of transportation's districts over the duration of the Eisenhower legacy transportation program.

(B) The process for determining the minimum amount of modernization and expansion project moneys shall be subject to the following:

(i) Adding together the minimum moneys set for each of the Kansas department of transportation's districts pursuant to paragraph (2)(A), the total shall be at least 50% of the estimated cost of constructing all modernization and expansion projects let to contract in

the Eisenhower legacy transportation program.

(ii) If the estimated cost of constructing all modernization and expansion projects in the Eisenhower legacy transportation program increases or decreases by more than 10%, then the minimum amount will be adjusted accordingly while still satisfying ~~subparagraph~~ *paragraph* (2)(B)(i).

(iii) For each of the Kansas department of transportation's districts, at least 40% of the minimum amounts determined in paragraph (2)(A), or adjusted amounts according to paragraph (2)(B)(ii), shall be let to construction contract by the end of year five of the Eisenhower legacy transportation program, and 100% of the minimum amounts determined in paragraph (2)(A), or adjusted amounts according to paragraph (2)(B)(ii), shall be let to construction contract by year 10 of the Eisenhower legacy transportation program.

(iv) Any modernization or expansion projects remaining from the transportation works for Kansas program pursuant to K.S.A. 68-2314b, and amendments thereto, shall not be considered when determining the minimum amounts in paragraph (2)(A) or (2)(B)(i).

(3) The secretary shall select projects for development every two years. The secretary shall select projects for construction every two years. The secretary is not required to construct every project selected for development. The selection of projects for development and construction shall take place every two years, after consultation with local jurisdictions.

(n) It is the intent of the legislature that the secretary take the actions necessary to have transportation improvement projects ready to let to construction as cash-flow management allows.

(o) The secretary, prior to June 30, 2030, shall develop a long-range transportation plan that examines, but is not limited to, transportation policy, project selection criteria and selection methods used in the Eisenhower legacy transportation program, transportation funding sources and Eisenhower legacy transportation program project categories. The long-range transportation plan shall make recommendations for a new transportation program for the state of Kansas. The long-range transportation plan shall be developed after consultation with the governor of the state of Kansas and state and local elected officials.

Sec. 2. K.S.A. 68-2320 is hereby amended to read as follows: 68-2320. (a) On and after July 1, 1991, the secretary of transportation is hereby authorized and empowered to issue bonds of the state of Kansas, payable solely from revenues accruing to the state highway fund and transferred to the highway bond debt service fund and pledged to their payment, for the purpose of providing funds to pay costs relating to construction, reconstruction, maintenance or improvement of highways in this state and to pay all expenses incidental thereto and to the bonds. The secretary is hereby authorized to issue bonds the total principal amount of which shall not exceed \$890,000,000.

(b) In addition to the provisions of subsection (a), on and after July 1, 1999, the secretary of transportation is hereby authorized and empowered to issue bonds of the state of Kansas, payable solely from revenues accruing to the state highway fund and transferred to the highway bond debt service fund and pledged to their payment, for the purpose of providing funds to pay costs relating to construction, reconstruction, maintenance or improvement of highways in this state and to pay all expenses incidental thereto and to the bonds. The secretary is hereby authorized to issue bonds the total principal amount of which shall not exceed \$1,272,000,000.

(c) (1) In addition to the provisions of subsections (a) and (b), on and after July 1, 2010, the secretary of transportation is hereby authorized and empowered to issue additional bonds of the state of Kansas, payable solely from revenues accruing to the state highway fund and transferred to the highway bond debt service fund and pledged to their payment, for the purpose of providing funds to pay

costs relating to construction, reconstruction, maintenance or improvement of highways in this state and to pay all expenses incidental thereto and to the bonds. On and after the effective date of this act, except as provided further, no bonds shall be issued by the secretary pursuant to this subsection unless the secretary certifies that, as of the date of issuance of any such series of additional bonds, the maximum annual debt service on all outstanding bonds issued pursuant to this section and K.S.A. 68-2328, and amendments thereto, including the bonds to be issued on such date, will not exceed 18% of projected state highway fund revenues for the current or any future fiscal year. During the fiscal year ending June 30, 2018, and the fiscal year ending June 30, 2019, the limitation on the amount of the maximum total amount of principal on all outstanding bonds issued pursuant to this subsection and K.S.A. 68-2328, and amendments thereto, for the purpose of issuing any such series of additional bonds authorized by the secretary shall be \$1,700,000,000 of the total principal for the transportation works for Kansas program authorized under K.S.A. 68-2314b et seq., and amendments thereto. The provisions of this section relating to limitations of bonded indebtedness shall not in any way impair the rights and remedies of the holders of any bonds issued prior to the effective date of this act.

(2) As used in this subsection:

(A) "Maximum annual debt service" means the maximum amount of debt service requirements on all outstanding bonds for the current or any future fiscal year;

(B) "debt service requirements" means, for each fiscal year, the aggregate principal and interest payments required to be made during such fiscal year on all outstanding bonds, including the additional bonds to be issued, less any interest subsidy payments expected to be received from the federal government, less any principal and interest payments irrevocably provided for from a dedicated escrow of United States government securities;

(C) "projected state highway fund revenues" means all revenues projected by the secretary of transportation to accrue to the state highway fund for the current or any future fiscal year; and

(D) "fiscal year" means the fiscal year of the state.

(3) Debt service requirements for variable rate bonds outstanding or proposed to be issued for the current or any future fiscal year for which the actual interest rate cannot be determined on the date of calculation shall be deemed to bear interest at an assumed rate equal to the average of the SIFMA swap index, or any successor variable rate index, for the immediately preceding five calendar years plus 1% and an amount determined by the secretary that represents the then current reasonable annual ancillary costs associated with variable rate debt, including credit enhancement, liquidity and remarketing costs; except that, debt service requirements for variable rate bonds that are hedged pursuant to an interest rate exchange or similar agreement that results in synthetic fixed rate debt shall be deemed to bear interest at the synthetic fixed rate plus .5% and an amount determined by the secretary that represents the then current reasonable annual ancillary costs associated with variable rate debt, including credit enhancement, liquidity and remarketing costs.

(4) Projected state highway fund revenues for the current or any future fiscal year for which the actual revenues cannot be determined on the date of calculation shall be deemed to be the actual revenues for the most recently completed fiscal year, ~~adjusted in each subsequent fiscal year by a percentage equal to the historical average annual increase or decrease in revenues for the five fiscal year period prior to the current fiscal year, and further~~ adjusted to take into account any increases or decreases in the statutory rates of any taxes or other charges ~~or transfers~~ that comprise a portion of the revenues.

(d) In accordance with procurement statutes, the secretary may contract with financial advisors, attorneys and such other professional services as the secretary deems necessary to carry out the provisions of

this act, and to do all things necessary or convenient to carry out the powers expressly granted in this act.

Sec. 3. K.S.A. 68-2328 is hereby amended to read as follows: 68-2328. (a) Bonds may be issued for the purpose of refunding, either at maturity or in advance of maturity, any bonds issued under this act, any interest on such bonds or both bonds and the interest thereof. Such refunding bonds may either be sold or delivered in exchange for the bonds being refunded. If sold, the proceeds may either be applied to the payment of the bonds being refunded or deposited in trust and there maintained in cash or investments for the retirement of the bonds being refunded, as shall be specified by the secretary and the authorizing resolution or trust indenture securing such refunding bonds. The authorizing resolution or trust indenture securing the refunding bonds may provide that the refunding bonds shall have the same security for their payment as provided for the bonds being refunded. Refunding bonds shall be sold and secured in accordance with the provisions of this act pertaining to the sale and security of the bonds. Any bonds that have been issued pursuant to this section shall not be counted toward the limit on the aggregate principal amount of bonds established under ~~subsections (a) and (b) of~~ K.S.A. 68-2320(a) and (b), and amendments thereto, *and such bonds shall not be subject to the limitations on the issuance of bonds established under K.S.A. 68-2320(c), and amendments thereto.*

(b) When all bonds issued under article 23 of chapter 68 of the Kansas Statutes Annotated, and amendments thereto, have either been paid or the lien of such bonds shall have been defeased in accordance with their terms so that the bonds are deemed to have been paid, the secretary of transportation shall certify such facts to the director of accounts and reports and upon receipt of such certification the director of accounts and reports shall transfer all moneys in the state freeway fund to the state highway fund and upon such transfer all liabilities of the state freeway fund are hereby transferred to and imposed upon the state highway fund and the state freeway fund is hereby abolished. Upon the abolition of the state freeway fund, any reference to the state freeway fund or any designation thereof, in any statute, contract or other document shall mean the state highway fund.

Sec. 4. K.S.A. 2020 Supp. 68-2332 is hereby amended to read as follows: 68-2332. (a) The Eisenhower legacy transportation program shall allow the secretary of transportation to award certain state highway system projects using alternative delivery procurement methods other than award of a design-bid-build contract to the lowest bidder as provided in K.S.A. 68-410, and amendments thereto, subject to the following:

(1) Projects selected for alternative delivery shall not include preservation projects as described in K.S.A. 2020 Supp. 68-2314c, and amendments thereto;

(2) alternative delivery may be used on three projects utilizing toll revenues for construction and maintenance of the project. One project utilizing toll revenues may be let to construction once every three years;

(3) not more than 3% of dollars spent in the Eisenhower legacy transportation program shall be used on alternative delivery. An additional 2% of dollars spent in the Eisenhower legacy transportation program shall be available for use on alternative delivery starting in fiscal year 2023. The dollar value of the three projects utilizing toll revenues referenced in paragraph (2) and projects obtained through federal grants or federal stimulus shall not be considered in determining the limits set forth in this paragraph; and

(4) any project utilizing alternative delivery shall equal or exceed ~~\$100,000,000~~ \$10,000,000 in costs.

(b) In addition to the requirements in subsection (a), alternative delivery projects in the Eisenhower legacy transportation program shall be subject to the following requirements and restrictions:

(1) Procurement methods for transportation alternative delivery

projects may provide for a single contract or multiple contracts that include, but are not limited to, services for preconstruction, design, construction, construction management, maintenance, operation, financing or a combination thereof;

(2) the Kansas department of transportation shall develop and utilize criteria for selecting whether alternative delivery or design-bid-build procurement process is in the best interest of the state. No project will be selected for alternative delivery without having been evaluated under the selection criteria established by the department. The selection criteria shall include, but not be limited to, the need for accelerated schedule, safety needs, project complexity, opportunity for innovation and economic development; *and*

(3) the Kansas department of transportation shall develop and utilize procedures for advertising proposals, receiving proposals, evaluating proposals, awarding contracts and administering contracts in its alternative delivery procurement program, and the procurement procedures in K.S.A. 68-408 through 68-410, 75-430a and 75-5804 through 75-5807, and amendments thereto, shall not apply to transportation alternative delivery projects.

(c) Notwithstanding any requirements set forth in subsections (b) or (c), the alternative delivery procedures shall include:

(1) A two-phase best value competitive selection or contracting process in which the first phase consists of short listing no more than four proposers based on qualifications identified in the request for qualifications and the second phase consists of the submission of price or technical proposals, or both, in response to a request for proposal;

(2) advertisement of requests for qualifications in the Kansas register for at least three consecutive weeks;

(3) prequalification of contractors performing construction and of firms performing professional technical services by the secretary in accordance with existing state statutes, regulations, and department procedures governing prequalification and licensing;

(4) a bond for performance and payment or alternative security guaranteeing contract performance and payment obligations for supplies, materials and labor furnished for the alternative delivery project; and

(5) a requirement that firms and key personnel identified in the qualifications phase and scored to determine the shortlist may not be replaced during the alternative delivery project without the Kansas department of transportation's written approval.

(d) Notwithstanding any other provision of law to the contrary, a contracting entity selected for an alternative delivery project shall not be in violation of K.S.A. 74-7001 et seq., and amendments thereto, and the contract entered into by such contractor shall not be void if such contractor obtains the professional services by subcontracting with an entity or entities duly licensed or holding a certificate of authorization to perform professional services in accordance with K.S.A. 74-7001 et seq., and amendments thereto.

(e) Notwithstanding the provisions of K.S.A. 68-419a, and amendments thereto, a contracting entity selected for an alternative delivery project that is responsible for preparing or furnishing design plans and specifications, through its own organization or by subcontracting as provided in subsection (d), shall be liable for damages arising out of design defects in such plans and specifications resulting in injury to persons or damage to property, occurring after completion of the contract and acceptance thereof by the Kansas department of transportation, if and to the extent such injury or damage arises out of a failure to exercise the degree of learning and skill ordinarily possessed by a reputable contractor or by a technical professional practicing in Kansas in the same or similar locality and under similar circumstances. Nothing contained in this subsection shall be construed as abrogating, limiting or otherwise affecting any cause of action accruing to the state or any agency or instrumentality thereof that was a party to such contract.

Sec. 5. K.S.A. 2020 Supp. 75-5094 is hereby amended to read as follows: 75-5094. (a) The secretary of transportation is hereby authorized and empowered to make grants for construction projects, the purpose of which is to expand and improve broadband service in the state of Kansas. The secretary of transportation is authorized to make such grants when working jointly with the office of broadband development within the department of commerce.

(b) There is hereby established in the state treasury the broadband infrastructure construction grant fund. All moneys credited to such fund shall be used to provide grants for the expansion of broadband service in the state of Kansas. All expenditures from such fund shall be made in accordance with the provisions of appropriation acts and upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of transportation or the secretary's designee.

(c) Grants made by the secretary of transportation from the broadband infrastructure construction grant fund shall reimburse grant recipients for up to 50% of actual construction costs in expanding and improving broadband service in the state of Kansas. Such grant reimbursements shall be upon such terms and conditions as the secretary of transportation may deem appropriate, in coordination with the secretary of commerce.

(d) On July 1, 2020, and each July 1 thereafter through July 1, 2022, the director of accounts and reports shall transfer \$5,000,000 from the state highway fund to the broadband infrastructure construction grant fund. On July 1, 2023, and each July 1 thereafter through July 1, 2030, the director of accounts and reports shall transfer \$10,000,000 from the state highway fund to the broadband infrastructure construction grant fund. At the end of each fiscal year, the secretary of transportation is hereby authorized to notify the director of accounts and reports to transfer all remaining and unencumbered funds from the broadband infrastructure construction grant fund to the state highway fund.

Sec. 6. K.S.A. 68-2320 and 68-2328 and K.S.A. 2020 Supp. 68-2314c, 68-2332 and 75-5094 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.