

HOUSE BILL No. 2293

By Committee on Commerce, Labor and Economic Development

2-9

1 AN ACT enacting the taxpayer empowerment, accountability and
2 transparency in state contracting act; relating to private service
3 contracts; requiring the department of administration to create a
4 database of private service contract information and to analyze the
5 potential impacts of such contracts; requiring contracting state agencies
6 to obtain the resources needed to monitor the performance of private
7 service contracts before finalizing such contracts.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) Sections 1 through 6, and amendments thereto, shall be
11 known and may be cited as the taxpayer empowerment, accountability and
12 transparency in state contracting act.

13 (b) As used in sections 1 through 6, and amendments thereto:

14 (1) "Person" means an individual, partnership, corporation or other
15 legal entity. "Person" does not include:

16 (A) Any state agency;

17 (B) any political or taxing subdivision of the state of Kansas or any
18 agency of such subdivision; or

19 (C) the judicial or legislative branch of the state of Kansas.

20 (2) "Private service contract" means a contract between a state agency
21 and a person that would allow such person to perform any function,
22 operation or service that would otherwise be performed by employees of a
23 state agency.

24 (3) "State agency" means any officer, department, bureau, division,
25 board, authority, agency, commission or institution of the state of Kansas
26 that is authorized by law to administer, enforce or interpret any law of the
27 state of Kansas. "State agency" does not include:

28 (A) Any political or taxing subdivision of the state of Kansas or any
29 agency of such subdivision; or

30 (B) the judicial or legislative branch of the state of Kansas.

31 Sec. 2. (a) The division of purchases of the department of
32 administration shall establish and maintain an online database of private
33 service contract information that is accessible, searchable, sortable and
34 downloadable. The database shall include the following information for
35 each private service contract:

36 (1) A description of the private service contract;

- 1 (2) the name of the state agency contracting for the service;
- 2 (3) the name of the contractor and any and all subcontractors;
- 3 (4) effective and expiration dates of the private service contract;
- 4 (5) the annual amount paid to the contractor in the past fiscal years
- 5 and the current fiscal year under the private service contract by funding
- 6 source;
- 7 (6) the annual amount proposed to be paid to the contractor in the
- 8 fiscal years beyond the approved budget;
- 9 (7) the total projected cost of the private service contract for all fiscal
- 10 years by funding source; and
- 11 (8) a list of private contractor employees for the private service
- 12 contract, reflected as full-time equivalent positions, their hourly wage rate
- 13 and the number of private contractor employees and consultants for the
- 14 current and previous fiscal years.

15 (b) The information described in subsection (a) shall be compiled in
16 an annual service contractor expenditure budget accompanying the
17 governor's budget, detailing total spending on total private service
18 contracts for the state.

19 (c) Each private service contract in excess of \$25,000 shall:

20 (1) Provide that the state agency is entitled to receive a copy of
21 records and files related to the performance of the governmental function;
22 and

23 (2) indicate that such records and files are subject to the Kansas open
24 records act, K.S.A. 45-215 et seq., and amendments thereto, and shall be
25 disclosed in accordance with such act.

26 (d) Any contractor doing business with a state agency under a private
27 service contract shall:

28 (1) Keep and maintain the public records that ordinarily and
29 necessarily would be kept and maintained by the state agency in order to
30 perform the service or activity;

31 (2) provide the state agency with access to such public records on the
32 same terms and conditions and, if applicable, assess a reasonable fee in
33 accordance with K.S.A. 45-219, and amendments thereto; and

34 (3) ensure that all meetings with a state agency or official are open to
35 the public in the same manner as prescribed under the Kansas open
36 meetings act, K.S.A. 75-4317, et seq., and amendments thereto.

37 Sec. 3. (a) Before any private service contract is finalized, the
38 contracting state agency shall prepare a request to the legislature for an
39 appropriation and any authority that is necessary for the contracting state
40 agency to hire personnel and obtain resources necessary to oversee and
41 monitor the performance of private service contracts and enforce other
42 conditions required by law. No procurement for such private service
43 contract shall proceed unless the necessary appropriation and authority

1 have been granted.

2 (b) If the contracting state agency procures services, the contracting
3 state agency shall:

4 (1) Keep a record of the cost analysis and findings that the
5 contracting state agency makes for each procurement the state agency
6 conducts, along with the basis for the decision to proceed with the
7 procurement;

8 (2) properly ensure that the contractor is providing services as
9 required by the private service contract within the costs as established by
10 such contract;

11 (3) enforce performance standards established by the private service
12 contract;

13 (4) collect and provide copies of the records required by law; and

14 (5) ensure that all aspects of the private service contract are properly
15 enforced.

16 (c) Any private service contract shall incorporate specific
17 performance criteria and cost parameters, and the contractor shall submit
18 quarterly reports to the secretary of administration on the contractor's
19 compliance with the performance criteria and actual costs incurred. The
20 private service contract may be canceled if the contractor fails to comply
21 with the performance criteria and other requirements set out in the private
22 service contract and if annual costs exceed those established by the private
23 service contract. The private service contract may be canceled at any time
24 if the contractor fails to comply with all applicable local, state and federal
25 laws and rules and regulations.

26 (d) Any person who has a private service contract with the state of
27 Kansas shall have no adjudicated record of substantial or repeated willful
28 noncompliance with any relevant federal, state or local laws or rules and
29 regulations, including payment of taxes or other payments owed to a
30 public entity. Prior to awarding a private service contract, bidders shall
31 submit documentation to the secretary of administration, signed by the
32 bidder under penalty of perjury, attesting to compliance with all applicable
33 local, state and federal laws, including health and safety, labor and
34 employment and licensing laws, that affect the employees, worksite or
35 performance of the private service contract. All bidders and contractors
36 shall complete a pledge of compliance provided by the secretary of
37 administration attesting under penalty of perjury to comply with all
38 applicable laws and rules and regulations.

39 Sec. 4. (a) Prior to entering into a private service contract, the
40 secretary of administration shall make public a cost comparison. No state
41 agency may enter a private service contract unless the proposed contract is
42 projected to result in overall cost savings to the state of at least 10% less
43 than the projected cost of having the services provided by public

1 employees. Contract costs shall include direct costs, including salaries and
2 fringe benefits, indirect overhead costs, including the contractor's
3 proportional share of existing administrative salaries and benefits, rent and
4 equipment costs, utilities and materials. Additionally, transition costs,
5 including unemployment compensation, shall be included in the analysis
6 of contractor costs.

7 (b) Projected cost savings may not derive from a bidder's failure to
8 provide health and retirement benefits and adequate wages to its
9 employees. Contractors shall pay wages comparable to step one of current
10 wages for public employees performing similar work or the average
11 private sector wage, whichever is less. In addition, contractors shall pay
12 not less than the current percentage for health benefits comparable to those
13 offered to current public employees or a wage differential sufficient to
14 cover the cost of the health benefits. The wages and benefits shall be
15 included in any bid, and actual wages and benefits shall be reported to the
16 contracting state agency on a quarterly basis. This information shall be
17 public record and itemized per employee of the contractor.

18 Sec. 5. (a) Prior to entering into a private service contract, the
19 secretary of administration shall produce a thorough analysis of the
20 possible impacts of the private service contract. The analysis shall include,
21 but not be limited to, the following:

- 22 (1) The possible loss of employment or income in a local area;
- 23 (2) impacts on social services in the local area;
- 24 (3) impacts on public assistance programs;
- 25 (4) economic impact on local businesses;
- 26 (5) any possible loss or increase in tax revenue for the local area; and
- 27 (6) any environmental impacts that may result from the private
28 service contract, including any upgrades or possible degradation.

29 (b) A report detailing the analysis conducted pursuant to subsection
30 (a) shall be posted on the department of administration's public website.
31 After such report is posted, the contracting state agency shall conduct
32 public meetings in order for all citizens to have an opportunity to address
33 concerns and obtain information.

34 (c) No private service contract shall be automatically renewed
35 without utilizing the competitive bidding process. Any in-house bids
36 submitted shall be considered. If an in-house bid or proposal meets the
37 cost and performance criteria specified in law or the request for proposal,
38 such bid shall be deemed the most qualified bid.

39 (d) No state agency may enter into a private service contract that
40 guarantees payment for services not provided.

41 (e) No private service contract shall:

- 42 (1) Provide for guaranteed occupancy rates for private prisons,
43 dormitories or any other contracted facility;

1 (2) prohibit a governmental entity from maintaining, improving or
2 building public infrastructure; or

3 (3) penalize a state agency if a contractor loses revenue as a result of
4 natural or man-made emergencies, such as acts of terrorism or acts of
5 nature.

6 (f) Any increases in fees or charges for public services shall be
7 submitted to the state agency for approval. The decision to approve or
8 disallow increases shall be made in a public manner, subject to the
9 requirements of the Kansas open meetings act.

10 Sec. 6. Prior to outsourcing any work, both the in-house and proposed
11 contractors' costs and scope of work shall be estimated by the head of the
12 state agency and provided to affected bargaining representatives, along
13 with all source information on all cost estimates. The bargaining
14 representative shall be provided a full and fair opportunity to present its
15 own cost estimates and recommendations for the new work processes.
16 Such estimates and recommendations shall be given full consideration.

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