

HOUSE BILL No. 2401

By Committee on Appropriations

2-18

1 AN ACT concerning the department of corrections; authorizing the
2 secretary of corrections to enter agreements for public-private
3 partnerships for projects for new or renovated buildings at correctional
4 institutions for education, skills-building and spiritual needs programs;
5 establishing a nonprofit corporation to receive gifts, donations, grants
6 and other moneys and engage in fundraising projects for funding such
7 projects; amending K.S.A. 75-3739 and repealing the existing section.
8

9 WHEREAS, The Legislature finds that it is in the public's interest to
10 prepare incarcerated persons to be ready to meet Kansas workforce needs
11 when released, by providing education and skills-building programs and
12 services; and

13 WHEREAS, There is a public need for the construction or renovation
14 of facilities that are used predominantly for education and skills-building
15 programs and services for persons housed in adult correctional institutions,
16 to prepare incarcerated persons for employment and successful reentry
17 after incarceration; and

18 WHEREAS, It is in the public interest to authorize, encourage and
19 incentivize public-private partnerships to support projects to raise funds
20 for and construct or renovate buildings to provide space to deliver
21 education and skills-building programs and services; and

22 WHEREAS, It is the intent of the Legislature to encourage investment
23 in the state by private entities, to facilitate various bond financing
24 mechanisms, private capital and other funding sources for constructing and
25 upgrading buildings for education and skills-building programs at
26 correctional institutions and to provide the greatest possible flexibility to
27 public and private entities for entering public-private partnerships for that
28 purpose; and

29 WHEREAS, It is the intent of the Legislature to encourage and enable
30 partnerships with faith-based organizations to address the spiritual needs
31 of incarcerated persons:

32 Now, therefore:

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

34 New Section 1. As used in K.S.A. 75-3739, and amendments thereto,
35 and sections 1 through 5, and amendments thereto:

36 (a) "Private entity" means any partnership, firm, association,

1 corporation, sole proprietorship or other business organization, whether
2 organized for profit or not-for-profit and includes any faith-based
3 organization.

4 (b) "Secretary" means the secretary of corrections.

5 (c) "Public-private partnership" means the relationship established
6 between the department of corrections and a private entity by contracting
7 for the performance of any combination of specified functions or
8 responsibilities to develop, finance, construct or renovate a building at a
9 correctional institution where the department of corrections cost for
10 development, finance, construction or renovation of such building does not
11 exceed 25% of the total cost of the developing, financing, constructing or
12 renovating such building.

13 (d) "Correctional institution" means the Lansing correctional facility,
14 Hutchinson correctional facility, Topeka correctional facility, Norton
15 correctional facility, Ellsworth correctional facility, Winfield correctional
16 facility, Osawatomie correctional facility, Larned correctional mental
17 health facility, Toronto correctional work facility, Stockton correctional
18 facility, Wichita work release facility, El Dorado correctional facility and
19 any other correctional institution established by the state for the
20 confinement of adult offenders under control of the secretary.

21 (e) "Public-private project" means the project to develop, finance,
22 construct or renovate a building at a correctional institution pursuant to a
23 public-private partnership.

24 (f) "Faith-based organization" means any religious, charitable and
25 other organization as defined by article 17 of chapter 17 of the Kansas
26 Statutes Annotated, and amendments thereto, or any other organization
27 whose values are based on faith and beliefs, or both, that has a mission
28 based on social values of the particular faith and whose members are from
29 a particular faith group.

30 (g) "Spiritual needs" means any program or service that addresses any
31 issue related to sincerely held religious beliefs.

32 New Sec. 2. (a) The secretary is hereby authorized to enter
33 agreements with private entities for public-private project for the purpose
34 of funding new or renovated buildings at a correctional institution for:

35 (1) Education and skills-building programs and services; and

36 (2) purposes of addressing the spiritual needs of incarcerated persons.

37 (b) The secretary shall determine whether the project is suitable for a
38 public-private partnership agreement, by conducting an analysis of the
39 feasibility, desirability and the convenience to the public of the project and
40 whether the project furthers the public policy goals of the department of
41 corrections. The secretary shall consult with the secretary of administration
42 for input from the office of facilities and property management when
43 conducting such analysis.

1 (c) Prior to commencement of a public-private project, the secretary
2 shall advise and consult with the joint committee on state building
3 construction concerning such project, including the budget for such
4 project.

5 (d) Nothing in this act shall be construed to mean that a public-private
6 partnership may be established for the purpose of developing, financing or
7 construction of a privately operated correctional institution.

8 (e) The secretary may request approval for the issuance of bonds for a
9 public-private project from the department of administration for the
10 purposes of K.S.A. 74-8905(b), and amendments thereto, and the
11 authorization of the issuance of bonds by the Kansas development finance
12 authority in accordance with K.S.A. 74-8905, and amendments thereto.

13 New Sec. 3. (a) For any proposed public-private project, the secretary
14 shall cause to be prepared a budget for the project.

15 (b) The budget shall reflect the source of the funds and set out with
16 particularity the full cost of construction and acquisition of such project.
17 The budget may, but is not required to, include operational costs of such
18 project.

19 (c) The secretary shall include any department of corrections costs for
20 such projects in budget estimates pursuant to K.S.A. 75-3717 and 75-
21 3717b, and amendments thereto, and clearly indicate the portion to be paid
22 by the state and the portion to be paid by private funds.

23 (d) The secretary is authorized to establish a nonprofit corporation
24 organized under section 501(c)(3) of the internal revenue code of 1986.
25 The board of directors of the nonprofit corporation shall consist of
26 representatives of the department of corrections and department of
27 administration. The purpose of the nonprofit corporation shall be to
28 receive gifts, donations, grants and other moneys and engage in
29 fundraising to fund new or renovated building projects for education,
30 skills-building and spiritual needs programs at any correctional institution.

31 New Sec. 4. (a) In any public-private partnership, the secretary shall
32 ensure the private entity is qualified to carry out the project, including, but
33 not limited to, ensuring that the private entity:

34 (1) Has available such lawful sources of funding, capital, securities or
35 other financial resources as are necessary to carry out the project;

36 (2) possesses either through its staff, subcontractors, a consortium or
37 joint venture agreement the managerial, organizational, technical capacity
38 and experience in the type of project undertaken;

39 (3) is qualified to lawfully conduct business in Kansas;

40 (4) certifies that no director, officer, partner, owner or other individual
41 with direct and significant control over the policy of the private entity has
42 been convicted of corruption or fraud in any jurisdiction of the United
43 States;

1 (5) maintains a policy of public liability insurance, a copy of which
2 shall be provided to the secretary; and

3 (6) agrees to abide by all relevant local, state and federal laws, rules
4 and regulations.

5 (b) In any public-private partnership, the secretary shall enter an
6 agreement that reflects the roles, duties, responsibilities and commitments
7 of all parties. The agreement shall include, but not be limited to:

8 (1) A clear statement: Of the purpose and scope of the project; of the
9 roles and responsibilities of each party; that the private entity does not gain
10 sovereign immunity by the agreement; and that each party bears liability
11 and responsibility for the actions of such party's agents and employees;

12 (2) procedures that govern the rights and responsibilities of the public
13 and private entities during the construction of the building and in the event
14 of the termination of the agreement or a material default;

15 (3) a description of how the project will be carried out consistent with
16 all standards binding on the state, department of corrections and
17 correctional institution where the building is being constructed or
18 renovated;

19 (4) a budget for the project that reflects source of funding and costs;

20 (5) a statement that upon completion, the buildings will be owned by
21 the state; and

22 (6) a statement reflecting that maintenance and operations costs shall
23 be the responsibility of the state after the building is completed.

24 New Sec. 5. (a) This act does not waive the sovereign immunity of
25 the State of Kansas.

26 (b) This act does not create sovereign immunity for any private entity
27 entering a public-private partnership under this act.

28 Sec. 6. K.S.A. 75-3739 is hereby amended to read as follows: 75-
29 3739. In the manner as provided in this act and rules and regulations
30 established thereunder:

31 (a) All contracts for construction and repairs; and all purchases of and
32 contracts for supplies, materials, equipment and contractual services to be
33 acquired for state agencies shall be based on competitive bids, except that
34 competitive bids need not be required in the following instances:

35 (1) For contractual services, supplies, materials; or equipment when,
36 in the judgment of the director of purchases, no competition exists;

37 (2) when, in the judgment of the director of purchases, chemicals and
38 other material or equipment for use in laboratories or experimental studies
39 by state agencies are best purchased without competition, or where rates
40 are fixed by law or ordinance;

41 (3) when, in the judgment of the director of purchases, an agency
42 emergency requires immediate delivery of supplies, materials or
43 equipment, or immediate performance of services;

1 (4) when any statute authorizes another procedure or provides an
2 exemption from the provisions of this section;

3 (5) when compatibility with existing contractual services, supplies,
4 materials or equipment is the overriding consideration;

5 (6) when a used item becomes available and is subject to immediate
6 sale; ~~or~~

7 (7) when, in the judgment of the director of purchases and the head of
8 the acquiring state agency, not seeking competitive bids is in the best
9 interest of the state; *or*

10 (8) *when a public-private partnership between the secretary of*
11 *corrections and a private entity exists for any public-private project to*
12 *develop, finance, construct or renovate a building at a correctional*
13 *institution, provided state funds do not exceed 25% of the total cost. The*
14 *provisions of this paragraph shall not apply to the procurement process*
15 *established in K.S.A. 75-5801 et seq., and amendments thereto, regarding*
16 *engineering services. As used in this paragraph, "public-private*
17 *partnership," "private entity" and "public-private project" mean the same*
18 *as defined in section 1, and amendments thereto.*

19 When the director of purchases approves a purchase of or contract for
20 supplies, materials, equipment, or contractual services in any instance
21 specified in this subsection, the director may delegate authority to make
22 the purchase or enter the contract under conditions and procedures
23 prescribed by the director. Except for purchases or contracts entered into
24 without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or
25 subsection (h), no purchase or contract entered into without a competitive
26 bid for an amount in excess of \$100,000 shall be entered into by the head
27 of any state agency or approved by the director of purchases unless the
28 director of purchases first posts an on-line notice of the proposed purchase
29 or contract at least seven days before the purchase or contract is awarded.
30 The director of purchases shall provide notice thereof to members of the
31 legislature at the beginning of each calendar year that such information
32 will be posted and the director of the division of purchases shall provide
33 the uniform resource locator (URL) and the number of times such
34 information shall be available. In the event a written protest of the
35 awarding of such a contract occurs during the seven-day notice period, the
36 director of purchases shall request from the protestor the contact
37 information, including name and mailing address, of the person or entity
38 that has expressed an interest in supplying the goods or services and
39 provide a copy of the specification to the person or entity that has
40 expressed an interest in supplying the goods or services and verify that
41 such person or entity is interested and capable of supplying such goods or
42 services.

43 Upon satisfaction of the director of purchases regarding the validity of

1 the protest and the existence of competition, the director of purchases shall
2 proceed with a competitive procurement. A competitive procurement shall
3 not be required when, in the judgment of the director of purchases, the
4 validity of the protest cannot be determined or competition for such goods
5 or services cannot be verified by the director of purchases.

6 The director of purchases shall prepare a detailed report at least once in
7 each calendar quarter of all contracts over \$5,000 entered into without
8 competitive bids under subsection (a)(1), (2), (3), (5), (6) ~~or~~, (7) *or* (8).
9 The director shall submit the report to the legislative coordinating council,
10 the chairperson of the committee on ways and means of the senate and the
11 chairperson of the committee on appropriations of the house of
12 representatives.

13 (b) (1) If the amount of the purchase is estimated to exceed \$50,000,
14 sealed bids shall be solicited by notice published once in the Kansas
15 register not less than 10 days before the date stated in the notice for the
16 opening of the bids. The director of purchases may waive this publication
17 of notice requirement when the director determines that a more timely
18 procurement is in the best interest of the state. The director of purchases
19 also may designate a trade journal for the publication. The director of
20 purchases also shall solicit such bids by sending notices by mail to
21 prospective bidders and by posting the notice on a public bulletin board for
22 at least 10 business days before the date stated in the notice for the
23 opening of the bids unless otherwise provided by law. All bids shall be
24 sealed when received and shall be opened in public at the hour stated in
25 the notice.

26 (2) The director of purchases shall prepare a detailed report at least
27 once in each calendar quarter of all instances in which the director waived
28 publication of the notice of bid solicitations in the Kansas register as
29 provided in this subsection. The director shall submit the report to the
30 legislative coordinating council, the chairperson of the committee on ways
31 and means of the senate and the chairperson of the committee on
32 appropriations of the house of representatives.

33 (c) All purchases estimated to exceed approximately \$25,000 but not
34 more than \$50,000, shall be made after receipt of sealed bids following at
35 least three days' notice posted on a public bulletin board.

36 (d) All purchases estimated to be more than \$5,000, but less than
37 \$25,000, may be made after the receipt of three or more bid solicitations
38 by telephone, telephone facsimile or sealed bid, following at least three
39 days' notice posted on a public bulletin board. Such bids shall be recorded
40 as provided in subsection (f) of K.S.A. 75-3740, and amendments thereto.
41 Any purchase that is estimated to be less than \$5,000 may be purchased
42 under conditions and procedures prescribed by the director of purchases.
43 Purchases made in compliance with such conditions and procedures shall

1 be exempt from other provisions of this section.

2 (e) With the approval of the secretary of administration, the director
3 of purchases may delegate authority to any state agency to make purchases
4 of less than \$25,000 under certain prescribed conditions and procedures.
5 The director of purchases shall prepare a report at least once in each
6 calendar quarter of all current and existing delegations of authority to state
7 agencies as provided in this subsection. The director shall submit the
8 report to the legislative coordinating council, the chairperson of the
9 committee on ways and means of the senate and the chairperson of the
10 committee on appropriations of the house of representatives.

11 (f) Subject to the provisions of subsection (e), contracts and
12 purchases shall be based on specifications approved by the director of
13 purchases. When deemed applicable and feasible by the director of
14 purchases, such specifications shall include either energy efficiency
15 standards or appropriate life cycle cost formulas, or both, for all supplies,
16 materials, equipment and contractual services to be purchased by the state.
17 The director of purchases may reject a contract or purchase on the basis
18 that a product is manufactured or assembled outside the United States. No
19 such specifications shall be fixed in a manner to effectively exclude any
20 responsible bidder offering comparable supplies, materials, equipment or
21 contractual services.

22 (g) Notwithstanding anything herein to the contrary, all contracts with
23 independent construction concerns for the construction, improvement,
24 reconstruction and maintenance of the state highway system and the
25 acquisition of rights-of-way for state highway purposes shall be advertised
26 and let as now or hereafter provided by law.

27 (h) The director of purchases may authorize state agencies to contract
28 for services and materials with other state agencies, or with federal
29 agencies, political subdivisions of Kansas, agencies of other states or
30 subdivisions thereof, or private nonprofit educational institutions, without
31 competitive bids.

32 (i) The director of purchases may participate in, sponsor, conduct, or
33 administer a cooperative purchasing agreement or consortium for
34 purchases of supplies, materials, equipment, and contractual services with
35 federal agencies or agencies of other states or local units of government.
36 Cooperative purchasing agreements entered into under this subsection
37 shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments
38 thereto.

39 (j) The director of purchases may delegate authority to any state
40 agency to make purchases under certain prescribed conditions and
41 procedures when the acquisition is funded, in whole or in part, from a
42 grant. Except as otherwise provided in subsection (k) ~~of this section~~,
43 purchases made in compliance with such conditions and procedures shall

1 be exempt from other provisions of this section. As used in this subsection
2 the term "grant" means a disbursement made from federal or private funds,
3 or a combination of these sources, to a state agency. Nothing in this
4 subsection shall allow federal grant moneys to be handled differently from
5 any other moneys of the state unless the requirements of the applicable
6 federal grant specifically require such federal moneys to be handled
7 differently.

8 (k) The director of purchases shall prepare a detailed report at least
9 once each calendar quarter of all contracts over \$5,000 for services,
10 supplies, materials or equipment entered into pursuant to subsection (h), (i)
11 or (j) and submit it to the legislative coordinating council, the chairperson
12 of the committee on ways and means of the senate and the chairperson of
13 the committee on appropriations of the house of representatives.

14 (l) Except as otherwise specifically provided by law, no state agency
15 shall enter into any lease of real property without the prior approval of the
16 secretary of administration. A state agency shall submit to the secretary of
17 administration such information relating to any proposed lease of real
18 property as the secretary may require. The secretary of administration shall
19 either approve, modify and approve or reject any such proposed lease.

20 (m) The director of purchases shall require all bidders on state
21 contracts to disclose all substantial interests held by the bidder in the state.

22 (n) As used in article 37 of chapter 75 of the Kansas Statutes
23 Annotated, and amendments thereto, and other statutory provisions
24 concerning state procurement, "sealed bids," "bulletin boards" and "mail"
25 shall include electronic bids, electronic bulletin boards and electronic mail
26 when such items are utilized in accordance with procedures prescribed by
27 the director of purchases.

28 Sec. 7. K.S.A. 75-3739 is hereby repealed.

29 Sec. 8. This act shall take effect and be in force from and after its
30 publication in the statute book.