

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2401

As Amended by Senate Committee on Ways
and Means

Brief*

HB 2401, as amended, would authorize the Secretary of Corrections (Secretary) to enter into agreements for public-private partnerships for projects for new or renovated buildings at correctional institutions.

Legislative Findings

The bill would include whereas clauses setting forth legislative findings regarding education and skills-building programming in correctional facilities, public-private partnerships, and addressing the spiritual needs of incarcerated persons.

Definitions (New Section 1)

The bill would define the terms “faith-based organization,” “public-private partnership,” “public-private project,” “private entity,” “secretary,” and “spiritual needs.”

The bill would also define the term “correctional institution” to mean the El Dorado, Ellsworth, Hutchinson, Lansing, Norton, Osawatomie, Stockton, Topeka, and Winfield correctional facilities; Larned Correctional Mental Health Facility; Toronto Correctional Work Facility; Wichita Work Release Facility; any juvenile correctional facility or institution defined in continuing law; and any other

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

correctional institution established by the state for the confinement of adult or juvenile offenders under control of the Secretary.

Secretary Authorization (New Section 2)

The bill would authorize the Secretary to enter into agreements for public-private partnerships for projects for the purpose of funding new or renovated buildings at correctional institutions for education, skills-building, and spiritual needs programs.

The bill would require the Secretary to determine project suitability by conducting an analysis of the feasibility, desirability, and the convenience to the public of the project, and whether the project furthers the public policy goals of the Department of Corrections (Department).

The bill would require the Secretary to consult with the Secretary of Administration for input from the Office of Facilities and Property Management when conducting the analysis. The bill would require the Secretary to advise and consult the Joint Committee on State Building Construction prior to start of the project.

The bill would clarify that public-private partnerships are not to be established for privately operated correctional institutions.

The bill would allow the Secretary to request approval to issue bonds for the public-private project.

The bill would require the Secretary, at the beginning of the 2022 Legislative Session and each year thereafter, to submit to the House Committee on Corrections and Juvenile Justice and Senate Committee on Judiciary an annual report on the following:

- Status of active public-private partnership projects, including funds raised for education, skills-building, and spiritual needs programs and services;
- Buildings renovated or constructed for such programs and services;
- Names of all program and service providers and descriptions of services offered; and
- Number of inmates enrolled in education or skills-building programs and the graduation or completion outcomes of such programs.

***Project Budget and Nonprofit Corporation Establishment
(New Section 3)***

The bill would require the Secretary to prepare a budget for any proposed project. The bill would require the budget to reflect the source of the funds and set out with particularity the full cost of construction and acquisition of such project and state the budget could include operational costs of such project. Further, the bill would require the budget to include any Department costs for such projects in budget estimates pursuant to continuing law and clearly indicate the portion to be paid by the State and the portion to be paid by private funds.

The bill would also allow the Secretary to establish a nonprofit 501(c)(3) corporation to receive gifts, donations, grants, and other moneys and engage in fundraising projects to fund these public-private partnership projects.

The bill would specify that the board of directors of the corporation would be required to include representatives of the Department and the Department of Administration.

***Private Entity Qualification and Party Responsibilities
(New Section 4)***

The bill would require the Secretary to ensure a private entity is qualified to carry out the public-private partnership project including ensuring the entity:

- Has lawful sources of funding, capital, securities, or other financial resources necessary to carry out the project available;
- Possesses the managerial, organizational, technical capacity and experience in the specific type of project undertaken either through staff, subcontractors, a consortium, or joint venture agreement;
- Is qualified to lawfully conduct business in Kansas;
- Certifies that no director, officer, partner, owner, or other individual with direct and significant control over the policy of the private entity has been convicted of corruption or fraud in any jurisdiction of the United States;
- Maintains a policy of public liability insurance, a copy of which is provided to the Secretary; and
- Agrees to abide by all relevant local, state, and federal laws, rules, and regulations.

The bill would require the Secretary to enter an agreement that reflects the roles, duties, responsibilities, and commitments of all parties and includes:

- A clear statement:
 - Of the purpose and scope of the project;
 - Of the roles and responsibilities of each party;

- That the private entity does not gain sovereign immunity by the agreement; and
- That each party bears liability and responsibility for the actions of such party's agents and employees;
- Procedures that govern the rights and responsibilities of the public and private entities during the construction of the building and in the event of the termination of the agreement or a material default;
- A description of how the project will be carried out consistent with all standards binding on the State, Department, and correctional institution where construction or renovations would occur;
- A budget for the project that reflects the source of funding and costs;
- A statement that, upon completion, the buildings will be owned by the State; and
- A statement reflecting that maintenance and operations costs shall be the responsibility of the State after the building is completed.

Sovereign Immunity (New Section 5)

The bill would provide the Act does not waive the sovereign immunity of the State of Kansas and does not create sovereign immunity for any private entity entering a public-private partnership.

Amendments to Contract Requirements (Section 6)

The bill would amend law concerning competitive bids to provide, if public funds do not exceed 25 percent of the total cost of the public-private project, the contract would not be

subject to the competitive bid requirements in continuing law. The bill would further clarify that such provisions would not apply to the procurement process in continuing law for engineering services.

The bill would also require the Director of Purchases to include public-private project contracts over \$5,000 in the quarterly report made available to the Legislature.

Technical and Conforming Amendments

The bill would also make technical and conforming amendments to ensure consistency in statutory phrasing.

Background

The bill was introduced by the House Committee on Appropriations at the request of Representative Francis.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 10, 2021, the Secretary and representatives of The Greater Kansas City Chamber of Commerce, Wichita Regional Chamber of Commerce, and Workforce Alliance of South Central Kansas testified as **proponents** of the bill, indicating the private-public partnerships will bring together businesses, colleges, chambers of commerce, non-profits, foundations, and other partners to create new learning environments and opportunities for inmates. Written-only **proponent** testimony was provided by representatives of Donnelly College and the Kansas City Metropolitan Crime Commission. No other testimony was provided.

The House Committee amended the bill to add juvenile correctional facilities or institutions to the definition of correctional institution.

Senate Committee on Ways and Means

In the Senate Committee hearing on March 25, 2021, the Secretary, Senator Pittman, and a representative of The Greater Kansas City Chamber of Commerce testified as **proponents** of the bill, generally noting an increased acceptance among employers regarding the hiring of qualified inmates upon release. Written-only **proponent** testimony was provided by representatives of Donnelly College, the Kansas City Metropolitan Crime Commission, the Wichita Regional Chamber of Commerce, and the Workforce Alliance of South Central Kansas. No other testimony was provided.

The Senate Committee amended the bill to add a provision requiring the Secretary to submit an annual report to certain legislative committees regarding the status of active public-private partnership projects and associated renovation and construction projects, as well as the outcomes of programs supported through such partnerships.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill as introduced, the Department indicates the bill would not have any fiscal effect on the agency. The Department indicates enactment of the bill would allow it to facilitate donations of philanthropic private funds to support certain buildings at correctional institutions. The bill would require the Department to include any anticipated projects under the provisions of the bill in its annual budget requests.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Private-public partnerships; Department of Corrections; correctional institutions