

HOUSE BILL No. 2194

By Committee on Appropriations

2-7

1 AN ACT creating the council on efficient government.

2

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

4 Section 1. Sections 1 through 13, and amendments thereto, shall be
5 known and may be cited as the council on efficient government act. Sec.

6 2. (a) It is the public policy of this state to provide the highest quality
7 services at the lowest possible cost to taxpayers. Efficiency can only be
8 achieved, however, if decisions about how government services are
9 provided are governed by the following fundamental principles:

10 (1) The state government should not compete with private businesses
11 that provide the same goods and services;

12 (2) the state government should not replicate, duplicate or compete
13 with not-for-profit organizations that provide the same goods and
14 services;

15 (3) the state government should not replicate, duplicate or compete
16 with the federal government or local units of government that provide the
17 same goods and services;

18 (4) there are certain functions and operations of state government
19 that are inherently governmental and cannot be outsourced, and these
20 activities are intimately related to the public interest; and

21 5) when activities are clearly not governmental functions and
22 operations, the state government should conduct a rigorous comparison of
23 private business or not-for-profit organizational costs with the costs of the
24 state government providing those functions and operations.

25 (b) The purpose of the council on efficient government is:

26 (1) To ensure that each state agency focuses on its core mission, and
27 delivers goods and services effectively and efficiently by leveraging
28 resources and contracting with private business suppliers or not-for-profit
29 organizations if those entities can more effectively and efficiently provide
30 such goods and services thereby reducing the cost of government while
31 expanding those services to the greatest number of citizens;

32 (2) to develop a comprehensive and detailed process to analyze
33 opportunities to improve the efficiency, cost-effectiveness and quality of
34 state governmental services, operations, functions and activities; and

35 (3) to evaluate for feasibility, cost-effectiveness and efficiency,
36 business cases that potentially could be outsourced and make

1 recommendations to state agencies prior to the outsourcing of goods or
2 services.

3 Sec. 3. As used in sections 1 through 13, and amendments thereto:

4 (a) "Activity" means the provision of goods or services or the
5 performance of any function or operation by a state agency.

6 (b) "Affiliated" means a person who directly or indirectly through
7 one or more intermediaries, controls or is controlled by, or is under
8 common control with, a specified entity.

9 (c) "Business case" means any proposal to outsource a state agency
10 activity or eliminate replication or duplication of a state agency activity
11 and operations carried out by a private business, not-for-profit
12 organization or other government agency.

13 (d) "Contractor" means any private business or not-for-profit
14 organization that contracts with a state agency to perform an activity
15 previously performed by such state agency.

16 (e) "State agency" means any department, authority, office or other
17 governmental agency of this state. The term shall not include any political
18 subdivision of the state, municipality or other unit of local government.

19 Sec. 4. (a) There is hereby created a body politic and corporate to
20 be known as the council on efficient government. The council on efficient
21 government is hereby constituted a public instrumentality and the
22 exercise of the authority and powers conferred by this act shall be
23 deemed and held to be the performance of an essential governmental
24 function.

25 (b) The council shall consists of 11 members as follows:

26 (1) One member, who shall be either the lieutenant governor or the
27 chief executive of a state agency, who shall be appointed by the governor;

28 (2) two members, who shall be engaged in private business and are
29 not members of the legislature, appointed by the governor;

30 (3) three members, who shall be engaged in private business and
31 only one of whom may be a member of the legislature, appointed by the
32 president of the senate;

33 (4) three members, who shall be engaged in private business and
34 only one of whom may be a member of the legislature, appointed by the
35 speaker of the house of representatives;

36 (5) one member, who shall be engaged in private business and who
37 shall not be a member of the legislature, appointed by the minority leader
38 of the senate; and

39 (6) one member, who shall be engaged in private business and who
40 shall not be a member of the legislature, appointed by the minority leader
41 of the house of representatives.

42 (c) Members shall be subject to confirmation by the senate as
43 provided in K.S.A. 75-4315b, and amendments thereto. Except as

1 provided by K.S.A. 46-2601, and amendments thereto, no person
2 appointed to the council shall exercise any power, duty or function as a
3 member of the council until confirmed by the senate.

4 (d) Members shall serve for a term of two years. Terms of members
5 appointed pursuant to this section shall expire on March 15. In the case of
6 the member who is a state official, such member shall serve for a term of
7 two years, or until such member ceases to hold public office, whichever
8 occurs first. Members shall serve until a successor is appointed and
9 confirmed.

10 (e) After the expiration of a member's term, or whenever a vacancy
11 occurs a member shall be appointed as described in subsection (a). In the
12 event of a vacancy the appointment shall be for the remainder of the
13 unexpired portion of the term. Any member is eligible for reappointment
14 for successive two-year terms.

15 (f) No member shall appoint a designee to serve in such member's
16 place on the council.

17 (g) The council shall annually elect a member as chairperson. The
18 member appointed pursuant to paragraph (a)(1) and any member who is a
19 member of the legislature is not eligible to serve as chairperson.

20 (h) The council shall meet at least four times a year at the call of the
21 chairperson. A quorum shall consist of a majority of the members of the
22 council.

23 (i) Members attending council meetings shall be entitled to
24 compensation and expenses as provided in K.S.A. 75-3223, and
25 amendments thereto.

26 Sec. 5. (a) In order to achieve its purpose as provided in this act,
27 the council on efficient government shall:

28 (1) Review and evaluate the possibility of outsourcing goods or
29 services provided by a state agency to a private business or not-for-profit
30 organization that is able to provide the same type of good or service and
31 whether such action would result in cost savings to the state;

32 (2) review and evaluate the possibility of outsourcing operations or
33 functions of a state agency to a private business or not-for-profit
34 organization that is able to more efficiently and cost-effectively perform
35 such operation or function;

36 (3) review and evaluate instances where a state agency is providing
37 goods or services in competition with one or more private businesses to
38 determine ways to eliminate such competition;

39 (4) review and evaluate instances where a state agency is providing
40 goods or services that replicate, duplicate or compete with one or more
41 not-for-profit organizations or federal or local units of government;

42 (5) make any requests it deems necessary to state agencies for an
43 inventory of such agency's activities that may be outsourced, or that

1 compete with, replicate or duplicate activities provided by private entities
2 or federal or local units of government;

3 (6) develop and implement a standard process for reviewing business
4 cases pursuant to this act;

5 (7) make recommendations to state agencies regarding the
6 outsourcing of operations, functions and the provision of goods and
7 services based on the council's review and evaluation of business cases
8 pursuant to this act; and

9 (8) identify and distribute information regarding the best practices in
10 outsourcing efforts to state agencies.

11 (b) The council may appoint advisory groups, provided, at least one
12 member of the council is appointed to each such group.

13 (c) The council shall annually prepare and submit a report to the
14 governor, the committee on ways and means of the senate and the
15 committee on appropriations of the house of representatives. The report
16 shall be submitted no later than January 15, and shall contain details of
17 the council's activities for the immediately preceding year and include the
18 following:

19 (1) Recommendations on methods of delivering government services
20 that would improve the efficiency, effectiveness and delivery of
21 government services;

22 (2) outsourcing efforts of state agencies, including the number of
23 business cases reviewed, those recommended for outsourcing and the
24 state agency action on the business case; and

25 (3) information on all outsourcing contracts entered into the
26 preceding year, including, the dollar value of each outsourcing contract,
27 descriptions of performance results, any breach of contract or inadequate
28 performance, and the status of extensions, renewals and amendments of
29 outsourcing contracts.

30 Sec. 6. The staff of the legislative research department shall provide
31 such assistance as may be requested by the council on efficient
32 government.

33 Sec. 7. (a) A business case may be submitted by the governor, any
34 member of the legislature, any state agency, a private business, a not-for-
35 profit organization or any government entity that is not a state agency. A
36 business case shall be submitted in the manner and form prescribed by
37 the council.

38 (b) A business case shall include the following:

39 (1) A description of the state agency activity the council is to review
40 and evaluate;

41 (2) a description of the private market for such activity; and

42 (3) a proposal as to the price to be paid by the state agency if such
43 activity were outsourced.

1 (c) If the business case is submitted by a state agency, the following
2 shall also be included in the business case:

3 (1) A description and analysis of the agency's performance with
4 respect to such activity;

5 (2) an analysis comparing the potential costs and savings to the
6 agency between outsourcing the activity and continuing to perform such
7 activity;

8 (3) a citation to existing legal authority for outsourcing such activity;

9 (4) a transition plan that addresses changes in personnel, equipment,
10 office location and communication with clients and the general public
11 should such activity be outsourced;

12 (5) a description of any legislative action necessary to accomplish
13 the outsourcing of such activity; and

14 (6) a description of specific performance standards that a contractor
15 must meet in performing such activity, including:

16 (A) Specific and measurable goals to be met by the contractor;

17 (B) a plan to ensure compliance by the contractor with all applicable
18 laws and regulations; and

19 (C) a contingency plan addressing the contractor's nonperformance
20 or inadequate performance of such activity.

21 (d) If the business case is submitted by an entity other than a state
22 agency, the council shall send a copy of the submitted business case to the
23 state agency currently performing the activity in question. The state
24 agency shall have 30 days from receipt of the business case to submit a
25 response to the council. The response shall include those items set forth
26 in subsection (c).

27 (e) The council may review and evaluate any business case that is
28 submitted to the council to determine: (1) If there is competition,
29 replication or duplication of an activity by a state agency with a private
30 business, not-for-profit organization or other government entity; (2)
31 whether such activity may be outsourced such state agency; and (3) the
32 costs and savings that will likely result from such outsourcing.

33 (f) In conducting its review and evaluation of a business case the
34 council shall consider the state agency's response submitted pursuant to
35 subsection (d), if applicable, and determine whether the activity in
36 question is an inherent governmental function that cannot be outsourced,
37 or a commercial activity which may be performed by an entity other than
38 the state agency. The council may hold public hearings, seek advice from
39 advisory groups and request additional information from the state agency.

40 (g) Any member of the council that is either employed by the state
41 agency which is performing the activity that is the subject of a business
42 case under review, or is affiliated with a private business or not-for-profit
43 organization that could perform such activity shall not participate in the

1 review and evaluation of that particular business case.

2 (h) Upon completion of its review and evaluation the council shall
3 prepare a report on its findings and recommendations. Copies of the
4 council's final report on a business case shall be sent to the entity that
5 initially submitted the business case, and the state agency which performs
6 the activity that is the subject of the business case.

7 (i) Any state agency receiving a report pursuant to subsection (h)
8 shall submit a response to the council within 45 days after receipt of the
9 report. The response shall include the agency decision with respect to
10 outsourcing or eliminating the activity, the reasons supporting the
11 decision and the implementation date, if any.

12 Sec. 8. Any contract entered into by a state agency with a private
13 business or not-for-profit organization which is an agreement for the
14 private business or not-for-profit organization to perform an activity
15 previously performed by the state agency shall include the following:

16 (a) A specific scope of work statement clearly identifying the activity
17 to be performed by the contractor;

18 (b) if services are being provided, an agreement as to what
19 constitutes adequate provision of such services, and the ability of the state
20 agency to resume provision of such services if not adequately provided
21 by the contractor;

22 (c) a specific transition plan providing for the transfer of the
23 activities in question to the contractor;

24 (d) specific and measurable performance standards that must be met
25 by the contractor;

26 (e) a provision granting the state agency access to all relevant
27 documents and records of the contractor necessary for the purposes of
28 verifying the contractor is meeting all performance standards and auditing
29 the contractor's performance;

30 (f) a provision requiring the contractor to interview and consider for
31 employment any state employee previously employed by the state agency
32 who expresses an interest in such employment; and

33 (g) a contingency plan for transferring such activity back to the state
34 agency in the event the contractor does not meet the required
35 performance standards.

36 Sec. 9. (a) When any contract for the purchase of goods or services
37 by any state agency, as that term is defined in K.S.A. 75-3701, and
38 amendments thereto, is not awarded to a vendor after such vendor has
39 submitted the lowest bid for such contract, the director of purchasing of
40 the department of administration shall prepare a written explanation
41 detailing the reasons why such vendor was not awarded the contract and
42 why the deficiencies in such vendor's bid could not be remedied to the
43 satisfaction of the director. In the event the contract is awarded by a state

1 agency other than the department of administration, such state agency
2 shall prepare a written explanation detailing the reasons why such vendor
3 was not awarded the contract and why the deficiencies in such vendor's
4 bid could not be remedied to the satisfaction of the head of such state
5 agency, and submit such written explanation to the director of purchasing
6 of the department of administration.

7 (b) On or before January 12, the director of purchasing of the
8 department of administration shall transmit to the standing committee on
9 appropriations of the house of representatives, the standing committee on
10 ways and means of the senate and the council on efficient government a
11 report that shall include all written explanations prepared in accordance
12 with this section during the immediately preceding year.

13 (c) The provisions of this section shall not apply to contracts that are
14 subject to the provisions of K.S.A. 75-5801 et seq., and amendments
15 thereto, or K.S.A. 75-1250 et seq., and amendments thereto, or to
16 contracts in support of the planning, development or implementation of a
17 road, bridge or public transportation construction program of the
18 department of transportation.

19 Sec. 10. (a) When any contract for the purchase of goods or
20 services by any state agency, as that term is defined in K.S.A. 75-3701,
21 and amendments thereto, is not awarded to a vendor that is: (1)
22 Domiciled in this state; (2) proposing to have the work which is the
23 subject matter of the contract performed by employees subject to Kansas
24 income withholding taxes; and (3) subject to Kansas income taxes, the
25 director of purchasing of the department of administration shall prepare a
26 written explanation detailing the reasons why such vendor was not
27 awarded the contract and why the deficiencies in such vendor's bid could
28 not be remedied to the satisfaction of the director. In the event the
29 contract is awarded by a state agency other than the department of
30 administration, such state agency shall prepare a written explanation
31 detailing the reasons why such vendor was not awarded the contract and
32 why the deficiencies in such vendor's bid could not be remedied to the
33 satisfaction of the head of such state agency, and submit such written
34 explanation to the director of purchasing of the department of
35 administration.

36 (b) On or before January 12, the director of purchasing of the
37 department of administration shall transmit to the standing committee on
38 appropriations of the house of representatives, the standing committee on
39 ways and means of the senate and the council on efficient government a
40 report that shall include all written explanations prepared in accordance
41 with this section during the immediately preceding year.

42 (c) The provisions of this section shall not apply to contracts that are
43 subject to the provisions of K.S.A. 75-5801 et seq., and amendments

1 thereto, or K.S.A. 75-1250 et seq., and amendments thereto, to contracts
2 in support of the planning, development or implementation of a road,
3 bridge or public transportation construction program of the department of
4 transportation or to contracts for building construction.

5 (d) For purposes of this section, the term "building construction"
6 means furnishing labor, equipment, material or supplies used or
7 consumed for the design, construction, alteration, renovation, repair or
8 maintenance of a building or structure; including multilevel parking
9 structures and stand-alone parking lots.

10 Sec. 11. (a) Any contract for the purchase of goods or services by
11 any state agency, as that term is defined in K.S.A. 75-3701, and
12 amendments thereto, which includes a provision for the automatic
13 renewal or extension of such contract, shall be reviewed by the head of
14 such agency to determine if such contract shall be allowed to be
15 automatically renewed or extended. Such review shall include an
16 evaluation of the cost savings the agency might benefit from if the agency
17 were to terminate the contract and issue a new request for proposal. If the
18 head of the state agency determines that it is in the agency's best interest
19 to allow the contract to be automatically renewed or extended, then the
20 head of the state agency shall prepare a written explanation detailing the
21 reasons why such contract was allowed to be automatically renewed or
22 extended and submit such written explanation to the director of
23 purchasing of the department of administration.

24 (b) On or before January 12, the director of purchasing of the
25 department of administration shall transmit to the standing committee on
26 appropriations of the house of representatives, the standing committee on
27 ways and means of the senate and the council on efficient government a
28 report that shall include all written explanations prepared in accordance
29 with this section during the immediately preceding year.

30 (c) The provisions of this section shall not apply to contracts that are
31 subject to the provisions of K.S.A. 75-5801 et seq., and amendments
32 thereto, or K.S.A. 75-1250 et seq., and amendments thereto, or to
33 contracts in support of the planning, development or implementation of a
34 road, bridge or public transportation construction program of the
35 department of transportation.

36 Sec. 12. The provisions of sections 1 through 13, and amendments
37 thereto, shall not apply to any activity conducted by or under the
38 authority of the state board of regents, or to any contract entered into by
39 the state board of regents or any postsecondary educational institution, as
40 defined by K.S.A. 74-3201b, and amendments thereto.

41 Sec. 13. If any provision of sections 1 through 13, and amendments
42 thereto, or the application thereof to any persons or circumstances is held
43 invalid, such invalidity shall not affect other provisions or application of

1 the act which can be given effect without the invalid provisions or
2 application and to this end the provisions of sections 1 through 13, and
3 amendments thereto, are declared to be severable.

4 Sec. 14. This act shall take effect and be in force from and after its
5 publication in the statute book.

6 Sec. 15. This act shall take effect and be in force from and after its
7 publication in the statute book.

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