

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2382

By Committee on Taxation

3-13

10 AN ACT relating to transportation; providing for a transportation pro-
11 gram; amending K.S.A. 68-416, 68-2319, 68-2320 and 68-2321 and
12 K.S.A. 2008 Supp. 68-2315 and 68-2331 and repealing the existing
13 sections; also repealing K.S.A. 68-2314a.

14

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

16 New Section 1. (a) In order to plan, develop and operate or coor-
17 dinate the development and operation of the various modes and systems
18 of transportation within the state, the secretary of transportation is hereby
19 authorized and directed to initiate a transportation program.

20 (b) The transportation program shall provide for the construction,
21 improvement, reconstruction and maintenance of the state highway sys-
22 tem. The program shall provide for the selection of projects which will
23 allow for the flexibility to meet emerging and economic needs. Program
24 expenditures may include, but not be limited to, the following:

25 (1) Preservation projects to efficiently maintain a safe state highway
26 system in its original or improved condition. It is the intent of the legis-
27 lature that bridges and pavement condition of the state highway system
28 be maintained or improved as determined by the Kansas department of
29 transportation's performance measures;

30 (2) capacity and economic opportunity projects, which include addi-
31 tions to the transportation system or which improve access, relieve con-
32 gestion and enhance economic development opportunities. The Kansas
33 department of transportation shall develop and utilize criteria for the
34 selection of capacity and economic opportunity projects. The selection
35 criteria shall include, but not be limited to, engineering data, local con-
36 sultation, geographic distribution and an economic impact analysis
37 evaluation;

38 (3) modernization projects, which include improvements to the trans-
39 portation system by widening lanes, making geometric improvements,
40 upgrading interchanges or building rail grade separations to improve the
41 safety, condition or service of the highway system. The Kansas depart-
42 ment of transportation shall develop and utilize criteria for the selection
43 of modernization projects. The selection criteria shall include, but not be

1 limited to, engineering data, local consultation and geographic distribu-
2 tion; and

3 (4) system enhancement projects which include additions to the sys-
4 tem of highways or which substantially improve safety, relieve congestion,
5 improve access or enhance economic development. The Kansas depart-
6 ment of transportation shall utilize the selection methodology developed
7 by the department to select system enhancement projects.

8 The department of transportation shall develop criteria for the incor-
9 poration of practical improvements into designs of the projects specified
10 in this subsection.

11 (c) The transportation program shall provide for assistance, including
12 credit and credit enhancements, to cities and counties in meeting their
13 responsibilities for the construction, improvement, reconstruction and
14 maintenance of the roads and bridges not on the state highway system.
15 These expenditures may include, but not be limited to, the following:

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

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

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

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

28 (5) programs that allow local governments to exchange federal aid
29 funds for state funds.

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

34 (e) The transportation program shall provide for an aviation program
35 to provide assistance for the planning, constructing, reconstructing or
36 rehabilitating the facilities of public use general aviation airports, in ac-
37 cordance with K.S.A. 75-5061, and amendments thereto.

38 (f) The transportation program shall provide for public transit pro-
39 grams to aid elderly persons, persons with disabilities and the general
40 public, in accordance with K.S.A. 75-5032 through 75-5038, and amend-
41 ments thereto, and K.S.A. 75-5051 through 75-5058, and amendments
42 thereto.

43 (g) The transportation program shall provide for a multi-modal eco-

1 nomic development program to provide assistance for transportation-sen-
 2 sitive economic opportunities on a local or a regional basis.

3 **(h) Contingent on the findings of the Amtrak feasibility study,**
 4 **the transportation program may develop a passenger rail program**
 5 **to provide passenger service in the state.**

6 ~~(h)~~ (i) The secretary of transportation shall, using the department of
 7 transportation selection methods and criteria, determine the projects to
 8 be selected for inclusion under the transportation program.

9 ~~(i)~~ (j) The transportation plan authorized by this section shall not be
 10 implemented until funding is provided.

11 Sec. 2. K.S.A. 68-416 is hereby amended to read as follows: 68-416.
 12 The state highway fund shall be apportioned as follows:

13 (a) The secretary of transportation annually shall apportion and dis-
 14 tribute quarterly, on the first day of January, April, July and October, to
 15 cities on the state highway system from the state highway fund moneys
 16 at the rate of \$3,000 per year per lane per mile for the maintenance of
 17 streets and highways in cities designated by the secretary as city con-
 18 necting links. Unless a consolidated street and highway fund is established
 19 pursuant to K.S.A. 12-1,119, and amendments thereto, all moneys dis-
 20 tributed by the secretary shall be credited to the street and alley funds
 21 of such cities. All moneys so distributed shall be used solely for the main-
 22 tenance of city connecting links. Maintenance of such city connecting
 23 links shall be as prescribed in K.S.A. 68-416a, and amendments thereto.
 24 As used in this subsection, “lane” means the portion of the roadway for
 25 use of moving traffic of a standard width prescribed by the secretary. In
 26 lieu of such apportionment, the secretary, by and with the consent of the
 27 governing body of any city within the state of Kansas, may maintain such
 28 streets within the city and pay for such maintenance from the highway
 29 fund.

30 (b) All of the remainder of such highway fund shall be used by the
 31 secretary of transportation for:

32 (1) The construction, improvement, reconstruction and maintenance
 33 of the state highway system;

34 (2) improvements in transportation programs to aid elderly persons,
 35 persons with disabilities and the general public;

36 (3) for any purpose specified in ~~K.S.A. 68-2314a~~ *section 1, and*
 37 *amendments thereto;*

38 (4) the support and maintenance of the department of transportation;

39 (5) the expenses of administering the motor vehicle registration and
 40 drivers’ license laws; and

41 (6) the payment of losses to department of transportation employees
 42 authorized by K.S.A. ~~2002~~ 2008 Supp. 75-5062, and amendments thereto.

43 Sec. 3. K.S.A. 2008 Supp. 68-2315 is hereby amended to read as

1 follows: 68-2315. Annually, prior to the 10th day of each regular session
2 of the legislature, the secretary of transportation shall submit a written
3 report to the governor and each member of the legislature providing:
4 (a) Summary financial information and a statement of assurance that
5 the department of transportation has prepared a comprehensive financial
6 report of all funds for the preceding year which includes a report by
7 independent public accountants attesting that the financial statements
8 present fairly the financial position of the Kansas department of trans-
9 portation in conformity with generally accepted accounting principles and
10 a notification that the complete comprehensive financial report, including
11 the auditor's report is available upon request;
12 (b) a detailed explanation of the methods or criteria employed in the
13 selection of ~~substantial maintenance and construction projects~~ *transportation projects under subsection (b) of section 1, and amendments thereto*,
14 and in the awarding of assistance to cities, counties or other transportation
15 providers;
16 (c) the proposed allocation and expenditure of moneys and proposed
17 work plan for the current fiscal year and at least the next five years;
18 (d) information concerning system enhancements, construction work
19 completed in the preceding fiscal year and construction work in progress;
20 (e) information concerning the operation and financial condition of
21 the transportation revolving fund;
22 (f) the annual allocation and expenditure of moneys from the coor-
23 dinated public transportation assistance fund under K.S.A. 75-5035, and
24 amendments thereto;
25 (g) the annual allocation and expenditure of moneys from the rail
26 service improvement fund under K.S.A. 75-5048, and amendments
27 thereto, including specific information relating to any grants or loans
28 made under such program;
29 (h) the annual allocation and expenditure of moneys from the public
30 use general aviation airport development fund under K.S.A. 75-5061, and
31 amendments thereto, including specific information relating to grants
32 made under such program;
33 (i) specific recommendations for any statutory changes necessary for
34 the successful completion of the ~~comprehensive~~ transportation program
35 specified in ~~K.S.A. 68-2314~~ *section 1, and amendments thereto*, or effi-
36 cient and effective operation of the Kansas department of transportation;
37 and
38 (j) an explanation of any material changes from the previous annual
39 report.
40 Sec. 4. K.S.A. 68-2319 is hereby amended to read as follows: 68-
41 2319. The following words or terms used in this act shall have the follow-
42 ing meanings unless a different meaning clearly appears from the context:
43

1 (a) “Bonds” means any bonds, notes or other evidences of indebt-
2 edness, including book-entry-only, whether or not the interest on such
3 bonds is subject to federal income taxation, issued pursuant to the au-
4 thority of this act.

5 (b) “Secretary” means the secretary of transportation.

6 (c) “Book-entry-only” means a system of electronic clearance, settle-
7 ment and transfer of security ownership without the use of securities
8 certificates.

9 (d) *“Total agency revenues” means all revenues accruing to the Kan-
10 sas department of transportation, including federal funds. “Total agency
11 revenues” shall not include funds of the special city and county highway
12 fund, county equalization and adjustment fund, bond proceeds and ex-
13 traordinary income.*

14 Sec. 5. K.S.A. 68-2320 is hereby amended to read as follows: 68-
15 2320. (a) On and after July 1, 1991, the secretary of transportation is
16 hereby authorized and empowered to issue bonds of the state of Kansas,
17 payable solely from revenues accruing to the state highway fund and
18 transferred to the highway bond debt service fund and pledged to their
19 payment, for the purpose of providing funds to pay costs relating to con-
20 struction, reconstruction, maintenance or improvement of highways in
21 this state and to pay all expenses incidental thereto and to the bonds. The
22 secretary is hereby authorized to issue bonds the total principal amount
23 of which shall not exceed \$890,000,000.

24 (b) In addition to the provisions of subsection (a), on and after July
25 1, 1999, the secretary of transportation is hereby authorized and empow-
26 ered to issue bonds of the state of Kansas, payable solely from revenues
27 accruing to the state highway fund and transferred to the highway bond
28 debt service fund and pledged to their payment, for the purpose of pro-
29 viding funds to pay costs relating to construction, reconstruction, main-
30 tenance or improvement of highways in this state and to pay all expenses
31 incidental thereto and to the bonds. The secretary is hereby authorized
32 to issue bonds the total principal amount of which shall not exceed
33 \$1,272,000,000.

34 (c) (1) *In addition to the provisions of subsections (a) and (b), on and
35 after July 1, 2009, the secretary of transportation is hereby authorized
36 and empowered to issue bonds of the state of Kansas payable solely from
37 revenues accruing to the state highway fund and transferred to the high-
38 way bond debt service fund and pledged to their payment, for the purpose
39 of providing funds to pay costs relating to construction, reconstruction,
40 maintenance or improvement of highways in this state and to pay all
41 expenses incidental thereto and to the bonds. The secretary is hereby
42 authorized to issue bonds in amounts determined by the secretary, except
43 that the secretary shall certify that the issuance of such bonds shall not*

1 *result within the next three year's in annual debt service payments which*
2 *exceed 18% of the annual adjusted total agency revenue. In calculating*
3 *the 18% limitation, the secretary shall use current revenue estimates and*
4 *may exclude the debt service on bonds for which supplemental revenues*
5 *specifically intended for the payment of such debt service have been*
6 *provided.*

7 (2) *The secretary may reserve a portion of the bonding capacity under*
8 *paragraph (1) for the issuance of bonds to provide funds for emerging*
9 *projects that may have a significant economic impact based on economic*
10 *impact analysis.*

11 ~~(c)~~ (d) In accordance with procurement statutes, the secretary may
12 contract with financial advisors, attorneys and such other professional
13 services as the secretary deems necessary to carry out the provisions of
14 this act, and to do all things necessary or convenient to carry out the
15 powers expressly granted in this act.

16 Sec. 6. K.S.A. 68-2321 is hereby amended to read as follows: 68-
17 2321. (a) Bonds issued shall be authorized by resolution of the secretary.
18 The secretary shall determine the form and manner of the execution of
19 the bonds and the bonds may be made exchangeable for bonds of another
20 denomination or in another form. The bonds shall be dated. Bonds issued
21 under ~~subsections (a) and (b) of~~ K.S.A. 68-2320, and amendments
22 thereto, shall mature not more than 20 years from their date. The bonds
23 may be in such form and denominations, may bear interest payable at
24 such times and at such rate or rates, may be payable at such places within
25 or without the state, may be subject to such terms of redemption in
26 advance of maturity at such prices, and may contain such terms and con-
27 ditions, all as the secretary shall determine. The bonds shall have all the
28 qualities of and shall be deemed to be negotiable instruments under the
29 laws of the state of Kansas. The authorizing resolution may contain any
30 other terms, covenants and conditions that the secretary deems reason-
31 able and desirable.

32 (b) The proceeds from the sale of the bonds authorized to be issued
33 under this section are deemed to be trust funds which shall be deposited
34 in the custody of the state treasurer in the highway bond proceeds fund
35 which is hereby created. The secretary shall have responsibility for the
36 management and control of the highway bond proceeds fund and shall
37 provide, by resolution, for both amounts and the duration of investments
38 of moneys in such fund. Such resolution may recommend investment and
39 reporting policies, including acceptable levels of return, risk and security.
40 After consultation with the secretary and subject to the terms, covenants
41 and conditions provided in the resolutions providing for the issuance of
42 such bonds, the director of investments shall have the authority to invest
43 and reinvest moneys in such fund and to acquire, retain, manage, includ-

1 ing the exercise of any voting rights, and dispose of investments of such
2 fund. In investing or reinvesting moneys in such fund, there shall be
3 exercised the judgment and care under the circumstances then prevailing
4 which persons of prudence, discretion and intelligence exercise in the
5 management of their own affairs, not in regard to speculation but in re-
6 gard to the permanent disposition of their funds, considering the probable
7 income as well as the probable safety of their capital, except that moneys
8 of the fund may not be invested in common stocks. Notwithstanding any-
9 thing to the contrary, all interest or other income of the investments,
10 after payment of any management fees, of the highway bond proceeds
11 fund shall be credited to the highway bond debt service fund, until pay-
12 ments on bonds authorized by this act and interest thereon has been fully
13 funded. Thereafter, earnings and other income shall be credited to the
14 state highway fund.

15 (c) The authorizing resolution may provide for the execution of a trust
16 indenture. The trust indenture may contain any terms, covenants and
17 conditions that are deemed desirable by the secretary, including, without
18 limitation, those pertaining to the maintenance of various funds and re-
19 serves, the nature and extent of any security for payment of the bonds,
20 the custody and application of the proceeds of the bonds, the collection
21 and disposition of bond proceeds and earnings thereon, the investing for
22 authorized purposes, and the rights, duties and obligations of the secre-
23 tary and the holders and registered owners of the bonds.

24 (d) Any authorizing resolution and trust indenture relating to the is-
25 suance and security of the bonds may set forth covenants, agreements
26 and obligations therein, which may be enforced by mandamus or other
27 appropriate proceeding at law or in equity.

28 (e) The bonds may be issued under the provisions of this act without
29 obtaining the consent of any department, division, commission, board,
30 bureau or agency of the state and without any other proceedings or the
31 happening of any other conditions or things than those proceedings, con-
32 ditions or things which are specifically required by this act.

33 Sec. 7. K.S.A. 2008 Supp. 68-2331 is hereby amended to read as
34 follows: 68-2331. (a) For the purpose of financing a portion of the com-
35 prehensive transportation program, ~~K.S.A. 68-2314a, et seq., and amend-~~
36 ~~ments thereto,~~ the Kansas development finance authority is hereby au-
37 thorized to issue one or more series of revenue bonds pursuant to the
38 Kansas development finance authority act, K.S.A. 74-8901 et seq., and
39 amendments thereto, in an amount necessary to provide a deposit or
40 deposits in a total amount not to exceed \$150,000,000 to the state highway
41 fund plus amounts necessary to pay the costs of issuance of the bonds,
42 including any credit enhancement, and provide any required reserves for
43 the bonds. The principal amount, interest rates and final maturity of such

1 revenue bonds and any bonds issued to refund such bonds or parameters
2 for such principal amount, interest rates and final maturity shall be ap-
3 proved by the secretary of transportation and by a resolution of the state
4 finance council. The bonds, and interest thereon, issued pursuant to this
5 section shall be payable from moneys appropriated by the state for such
6 purpose. The bonds and interest thereon, issued pursuant to this section
7 shall be obligations only of the authority and in no event shall such bonds
8 constitute an indebtedness or obligation of the Kansas department of
9 transportation or an indebtedness or obligation for which the faith and
10 credit or any assets of the Kansas department of transportation are
11 pledged.

12 (b) (1) The authority may pledge the contract or contracts authorized
13 in subsection (c), or any part thereof, for the payment or redemption of
14 the bonds, and covenant as to the use and disposition of money available
15 to the authority for payments of the bonds. The authority is authorized
16 to enter into any agreements necessary or desirable to effectuate the
17 purposes of this section.

18 (2) The proceeds from the sale of the bonds, other than refunding
19 bonds, issued pursuant to this section, after payment of any costs related
20 to the issuance of such bonds, shall be paid by the authority to the Kansas
21 department of transportation to be applied to the payment, in full or in
22 part, of the construction projects authorized by the comprehensive trans-
23 portation program.

24 (3) The state hereby pledges and covenants with the holders of any
25 bonds issued pursuant to the provisions of this section, that it will not
26 limit or alter the rights or powers vested in the authority by this section,
27 nor limit or alter the rights or powers of the authority, the department of
28 administration or the Kansas department of transportation, in any manner
29 which would jeopardize the interest of the holders or any trustee of such
30 holders or inhibit or prevent performance or fulfillment by the authority,
31 the department of administration or the Kansas department of transpor-
32 tation with respect to the terms of any agreement made with the holders
33 of the bonds or agreements made pursuant to this section, except that
34 the failure of the legislature to appropriate moneys for any purpose shall
35 not be deemed a violation of this pledge and covenant. The department
36 of administration is hereby specifically authorized to include this pledge
37 and covenant in any agreement with the authority. The authority is hereby
38 specifically authorized to include this pledge and covenant in any bond
39 resolution, trust indenture or agreement for the benefit of holders of the
40 bonds.

41 (4) Revenue bonds may be issued pursuant to this section without
42 obtaining the consent of any department, division, commission, board or
43 agency of the state, other than the approvals of the state finance council

1 required by this section, and without any other proceedings or the oc-
2 currence of any other conditions or other things other than those pro-
3 ceedings, conditions or things which are specifically required by the Kan-
4 sas development finance authority act.

5 (c) The department of administration and the authority are author-
6 ized to enter into one or more contracts to implement the payment ar-
7 rangement that is provided for in this section. The contract or contracts
8 shall provide for payment of the amounts required to be paid pursuant
9 to this section and shall set forth the procedure for the transfer of moneys
10 for the purpose of paying such moneys. The contract or contracts shall
11 contain such terms and conditions including principal amount, interest
12 rates and final maturity as shall be approved by resolution of the state
13 finance council and shall include, but not be limited to, terms and con-
14 ditions necessary or desirable to provide for repayment of and to secure
15 any bonds of the authority issued pursuant to this section.

16 (d) In addition to the bonds authorized under subsection (a), if the
17 incremental increases in the amount of federal funds estimated to be
18 available to fund the comprehensive transportation program projects for
19 state fiscal years 2005 through 2009 by the congressional reauthorization
20 of the federal highway program are less than the anticipated federal re-
21 ceipts, the Kansas development finance authority is authorized to issue
22 one or more series of revenue bonds pursuant to the Kansas development
23 finance authority act, K.S.A. 74-8901 et seq., and amendments thereto.
24 Such bonds shall be in an amount necessary to provide a deposit or de-
25 posits in a total amount not to exceed the lesser of the federal shortfall
26 or \$60,000,000 to the state highway fund. The purpose of such bonds
27 shall be to off-set shortfalls in anticipated federal receipts. The issuance
28 of such bonds shall be approved by resolution of the state finance council
29 and shall be issued in accordance with the provisions of this section.

30 No bonds shall be issued pursuant to this subsection prior to the review
31 and recommendation to the state finance council of such issuance by the
32 legislative budget committee.

33 (e) The approvals by the state finance council required by subsection
34 (a), (c) and (d) are hereby characterized as matters of legislative delega-
35 tion and subject to the guidelines prescribed in subsection (c) of K.S.A.
36 75-3711c, and amendments thereto. Such approvals may be given by the
37 state finance council when the legislature is in session.

38 (f) Except for bonds authorized under subsection (d), no bonds shall
39 be issued pursuant to this section prior to the review of and recommen-
40 dation to the state finance council of such issuance by the standing com-
41 mittees on transportation of the house of representatives and the senate.

42 Sec. 8. K.S.A. 68-416, 68-2314a, 68-2319, 68-2320 and 68-2321 and
43 K.S.A. 2008 Supp. 68-2315 and 68-2331 are hereby repealed.

1 Sec. 9. This act shall take effect and be in force from and after its
2 publication in the statute book.