

Substitute for HOUSE BILL No. 2403

By Committee on Appropriations

2-8

10 AN ACT **[concerning state contracts;]** creating the council on efficient
11 government**[/; relating to awarding contracts].**
12

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

14 Section 1. Sections 1 through ~~13~~ **[19]**, and amendments thereto,
15 shall be known and may be cited as the council on efficient government
16 act.

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

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

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

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

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

31 (5) when activities are clearly not governmental functions and oper-
32 ations, the state government should conduct a rigorous comparison of
33 private business or not-for-profit organizational costs with the costs of the
34 state government providing those functions and operations.

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

36 (1) To ensure that each state agency focuses on its core mission, and
37 delivers goods and services effectively and efficiently by leveraging re-
38 sources and contracting with private business suppliers or not-for-profit
39 organizations if those entities can more effectively and efficiently provide
40 such goods and services thereby reducing the cost of government while
41 expanding those services to the greatest number of citizens;

42 (2) to develop a comprehensive and detailed process to analyze op-
43 portunities to improve the efficiency, cost-effectiveness and quality of

1 state governmental services, operations, functions and activities; and
2 (3) to evaluate for feasibility, cost-effectiveness and efficiency, busi-
3 ness cases that potentially could be outsourced and make recommenda-
4 tions to state agencies prior to the outsourcing of goods or services.

5 Sec. 3. As used in sections 1 through ~~13~~ [19], and amendments
6 thereto:

7 (a) “Activity” means the provision of goods or services or the per-
8 formance of any function or operation by a state agency.

9 (b) “Affiliated” means a person who directly or indirectly through one
10 or more intermediaries, controls or is controlled by, or is under common
11 control with, a specified entity.

12 (c) “Business case” means any proposal to outsource a state agency
13 activity or eliminate replication or duplication of a state agency activity
14 and operations carried out by a private business, not-for-profit organiza-
15 tion or other government agency.

16 (d) “Contractor” means any private business or not-for-profit organ-
17 ization that contracts with a state agency to perform an activity previously
18 performed by such state agency.

19 (e) “State agency” means any department, authority, office or other
20 governmental agency of this state. The term shall not include any political
21 subdivision of the state, municipality or other unit of local government.

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

27 (b) The council shall consist of 11 members as follows:

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

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

32 (3) three members, who shall be engaged in private business and only
33 one of whom may be a member of the legislature, appointed by the pres-
34 ident of the senate;

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

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

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

- 1 (c) Members shall be subject to confirmation by the senate as pro-
2 vided in K.S.A. 75-4315b, and amendments thereto. Except as provided
3 by K.S.A. 46-2601, and amendments thereto, no person appointed to the
4 council shall exercise any power, duty or function as a member of the
5 council until confirmed by the senate.
- 6 (d) Members shall serve for a term of two years. Terms of members
7 appointed pursuant to this section shall expire on March 15. In the case
8 of the member who is a state official, such member shall serve for a term
9 of two years, or until such member ceases to hold public office, whichever
10 occurs first. Members shall serve until a successor is appointed and
11 confirmed.
- 12 (e) After the expiration of a member's term, or whenever a vacancy
13 occurs a member shall be appointed as described in subsection (a). In
14 the event of a vacancy the appointment shall be for the remainder of the
15 unexpired portion of the term. Any member is eligible for reappointment
16 for successive two-year terms.
- 17 (f) No member shall appoint a designee to serve in such member's
18 place on the council.
- 19 (g) The council shall annually elect a member as chairperson. The
20 member appointed pursuant to paragraph (a)(1) and any member who is
21 a member of the legislature is not eligible to serve as chairperson.
- 22 (h) The council shall meet at least four times a year at the call of the
23 chairperson. A quorum shall consist of a majority of the members of the
24 council.
- 25 (i) Members attending council meetings shall be entitled to compen-
26 sation and expenses as provided in K.S.A. 75-3223, and amendments
27 thereto.
- 28 Sec. 5. (a) In order to achieve its purpose as provided in this act, the
29 council on efficient government shall:
- 30 (1) Review and evaluate the possibility of outsourcing goods or serv-
31 ices provided by a state agency to a private business or not-for-profit
32 organization that is able to provide the same type of good or service and
33 whether such action would result in cost savings to the state;
- 34 (2) review and evaluate the possibility of outsourcing operations or
35 functions of a state agency to a private business or not-for-profit organi-
36 zation that is able to more efficiently and cost-effectively perform such
37 operation or function;
- 38 (3) review and evaluate instances where a state agency is providing
39 goods or services in competition with one or more private businesses to
40 determine ways to eliminate such competition;
- 41 (4) review and evaluate instances where a state agency is providing
42 goods or services that replicate, duplicate or compete with one or more
43 not-for-profit organizations or federal or local units of government;

- 1 (5) make any requests it deems necessary to state agencies for an
2 inventory of such agency's activities that may be outsourced, or that com-
3 pete with, replicate or duplicate activities provided by private entities or
4 federal or local units of government;
- 5 (6) develop and implement a standard process for reviewing business
6 cases pursuant to this act;
- 7 (7) make recommendations to state agencies regarding the outsourc-
8 ing of operations, functions and the provision of goods and services based
9 on the council's review and evaluation of business cases pursuant to this
10 act; and
- 11 (8) identify and distribute information regarding the best practices in
12 outsourcing efforts to state agencies.
- 13 (b) The council may appoint advisory groups, provided, at least one
14 member of the council is appointed to each such group.
- 15 (c) The council shall annually prepare and submit a report to the
16 governor, the committee on ways and means of the senate and the com-
17 mittee on appropriations of the house of representatives. The report shall
18 be submitted no later than January 15, and shall contain details of the
19 council's activities for the immediately preceding year and include the
20 following:
 - 21 (1) Recommendations on methods of delivering government services
22 that would improve the efficiency, effectiveness and delivery of govern-
23 ment services;
 - 24 (2) outsourcing efforts of state agencies, including the number of
25 business cases reviewed, those recommended for outsourcing and the
26 state agency action on the business case; and
 - 27 (3) information on all outsourcing contracts entered into the preced-
28 ing year, including, the dollar value of each outsourcing contract, descrip-
29 tions of performance results, any breach of contract or inadequate per-
30 formance, and the status of extensions, renewals and amendments of
31 outsourcing contracts.
- 32 Sec. 6. The staff of the legislative research department shall provide
33 such assistance as may be requested by the council on efficient
34 government.
- 35 Sec. 7. (a) A business case may be submitted by the governor, any
36 member of the legislature, any state agency, a private business, a not-for-
37 profit organization or any government entity that is not a state agency. A
38 business case shall be submitted in the manner and form prescribed by
39 the council.
- 40 (b) A business case shall include the following:
 - 41 (1) A description of the state agency activity the council is to review
42 and evaluate;
 - 43 (2) a description of the private market for such activity; and

- 1 (3) a proposal as to the price to be paid by the state agency if such
2 activity were outsourced.
- 3 (c) If the business case is submitted by a state agency, the following
4 shall also be included in the business case:
- 5 (1) A description and analysis of the agency's performance with re-
6 spect to such activity;
- 7 (2) an analysis comparing the potential costs and savings to the agency
8 between outsourcing the activity and continuing to perform such activity;
- 9 (3) a citation to existing legal authority for outsourcing such activity;
- 10 (4) a transition plan that addresses changes in personnel, equipment,
11 office location and communication with clients and the general public
12 should such activity be outsourced;
- 13 (5) a description of any legislative action necessary to accomplish the
14 outsourcing of such activity; and
- 15 (6) a description of specific performance standards that a contractor
16 must meet in performing such activity, including:
- 17 (A) Specific and measurable goals to be met by the contractor;
- 18 (B) a plan to ensure compliance by the contractor with all applicable
19 laws and regulations; and
- 20 (C) a contingency plan addressing the contractor's nonperformance
21 or inadequate performance of such activity.
- 22 (d) If the business case is submitted by an entity other than a state
23 agency, the council shall send a copy of the submitted business case to
24 the state agency currently performing the activity in question. The state
25 agency shall have 30 days from receipt of the business case to submit a
26 response to the council. The response shall include those items set forth
27 in subsection (c).
- 28 (e) The council may review and evaluate any business case that is
29 submitted to the council to determine: (1) If there is competition, repli-
30 cation or duplication of an activity by a state agency with a private busi-
31 ness, not-for-profit organization or other government entity; (2) whether
32 such activity may be outsourced such state agency; and (3) the costs and
33 savings that will likely result from such outsourcing.
- 34 (f) In conducting its review and evaluation of a business case the
35 council shall consider the state agency's response submitted pursuant to
36 subsection (d), if applicable, and determine whether the activity in ques-
37 tion is an inherent governmental function that cannot be outsourced, or
38 a commercial activity which may be performed by an entity other than
39 the state agency. The council may hold public hearings, seek advice from
40 advisory groups and request additional information from the state agency.
- 41 (g) Any member of the council that is either employed by the state
42 agency which is performing the activity that is the subject of a business
43 case under review, or is affiliated with a private business or not-for-profit

1 organization that could perform such activity shall not participate in the
2 review and evaluation of that particular business case.

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

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

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

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

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

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

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

27 (e) a provision granting the state agency access to all relevant docu-
28 ments and records of the contractor necessary for the purposes of veri-
29 fying the contractor is meeting all performance standards and auditing
30 the contractor's performance;

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

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

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

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

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

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

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

36 (b) On or before January 12, the director of purchasing of the de-
37 partment of administration shall transmit to the standing committee on
38 appropriations of the house of representatives, the standing committee
39 on ways and means of the senate and the council on efficient government
40 a 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, ~~or~~ to con-
2 tracts in support of the planning, development or implementation of a
3 road, bridge or public transportation construction program of the de-
4 partment of transportation [**or to contracts for building construction**].

5 **[(d) For purposes of this section, the term “building construc-**
6 **tion” means furnishing labor, equipment, material or supplies**
7 **used or consumed for the design, construction, alteration, reno-**
8 **vation, repair or maintenance of a building or structure, including**
9 **multilevel parking structures and stand-alone parking lots.]**

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

24 (b) On or before January 12, the director of purchasing of the de-
25 partment of administration shall transmit to the standing committee on
26 appropriations of the house of representatives, the standing committee
27 on ways and means of the senate and the council on efficient government
28 a 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 con-
33 tracts in support of the planning, development or implementation of a
34 road, bridge or public transportation construction program of the de-
35 partment of transportation.

36 Sec. 12. The provisions of sections 1 through ~~13~~ **[19]**, and amend-
37 ments 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,
40 as defined by K.S.A. 74-3201b, and amendments thereto.

41 **[Sec. 13. (a) All vendors shall verify the identity and employ-**
42 **ment eligibility of all persons hired by completing and retaining**
43 **pursuant to this section a federal form I-9 for each employee. For**

1 purposes of this section, the term employee shall not include any
2 person providing services for the vendor as an independent
3 contractor.

4 [(b) Vendors shall, to the extent not inconsistent with federal
5 laws and regulations:

6 [(1) Ensure that each employee completes section 1 of the form
7 I-9 when the employee starts work;

8 [(2) review documents establishing each employee's identity
9 and eligibility to work to ensure that such documents reasonably
10 appear:

11 [(A) To be genuine; and

12 [(B) to relate to the individual presenting the documents;

13 [(3) complete section 2 of the form I-9;

14 [(4) complete section 3 of the form I-9;

15 [(5) retain the form I-9 for three years after the date the person
16 began work or one year after the person's employment is termi-
17 nated, whichever is later; and

18 [(6) make the form I-9 available for inspection by state or fed-
19 eral officials upon request with three days notice.

20 [(c) The Kansas department of labor shall make the form I-9
21 available to all vendors.

22 [(d) No action shall be brought by any person, city, county or
23 state official against any vendor who complies with the provisions
24 of subsections (a) and (b) relating in any way to the employment
25 of an illegal alien.

26 [(e) In the event that the form I-9 is amended or replaced after
27 the enactment of this section, a vendor shall be considered in com-
28 pliance with the provisions of subsections (a) and (b) if it completes
29 and maintains the then current federal employment eligibility
30 form consistent with all relevant federal laws and regulations.

31 [Sec. 14. (a) A person or entity is considered to have complied
32 with a requirement of sections 13 through 16, and amendments
33 thereto, notwithstanding a technical or procedural failure to meet
34 such requirement, if there was a good faith attempt to comply with
35 the federal requirements found in title 8 of the United States code,
36 section 1324a.

37 [(b) A person or entity which establishes that it has complied
38 in good faith with respect to the hiring, recruiting or referral for
39 employment of an alien in the United States has established an
40 affirmative defense under sections 13 through 16, and amend-
41 ments thereto.

42 [Sec. 15. (a) No state agency shall, for a period of five years
43 commencing on the date of judgment or final order, award a public

1 works or purchase contract to a vendor, nor shall a vendor be el-
2 ible to bid for or receive a public works contract during such
3 five-year period, when such vendor has, in the preceding five
4 years:

5 [(1) Been convicted of violating a law of this state, including,
6 but not limited to, K.S.A. 21-4409, and amendments thereto, or
7 federal law respecting the employment of illegal aliens; or

8 [(2) been a party to a state agency proceeding in this state in
9 which a penalty or sanction was ordered, either by hearing or final
10 order, or through stipulation and agreement, for violation of a law
11 of this state, including, but not limited to, K.S.A. 21-4409, and
12 amendments thereto, or federal law respecting the employment of
13 illegal aliens.

14 [(b) Any vendor found to be in violation of subsection (a) by
15 attempting to bid on a contract or having been awarded a contract
16 when ineligible shall, in addition to all available administrative
17 penalties and sanctions, forfeit and be liable for an amount equal
18 to the total value of the state benefit such vendor has received or
19 been the beneficiary of for the period of five years leading up to
20 the date of the finding of guilt, not to exceed the federally pre-
21 scribed civil penalty in title 8 of the United States code, section
22 1324a.

23 [Sec. 16. As used in sections 13 through 16, and amendments
24 thereto:

25 [(a) “Illegal alien” means any person not a citizen of the United
26 States who has entered the United States in violation of the federal
27 immigration and naturalization act or regulations issued there-
28 under, who has legally entered but without the right to be em-
29 ployed in the country, or who has legally entered subject to a time
30 limit but has remained illegally after the expiration of such time
31 limit, except that the term “illegal alien” shall not mean any person
32 who currently has the legal right to remain in the United States
33 and to be employed in the United States even though such person
34 originally entered the United States in violation of the federal im-
35 migration and naturalization act or regulations issued thereunder
36 and is not a citizen of the United States.

37 [(b) “Vendor” means any person, including any partnership,
38 firm, subcontractor, corporation or association, or agent thereof,
39 who engages or utilizes the personal services of one or more in-
40 dividuals for a salary or wage.

41 [Sec. 17. The secretary of the department of administration
42 shall be responsible for administering the provisions of sections 13
43 through 16, and amendments thereto.

1 **[Sec. 18. The provisions of the Kansas administrative proce-**
2 **dure act, K.S.A. 77-501 et seq., and amendments thereto, shall gov-**
3 **ern all proceedings initiated under sections 13 through 16, and**
4 **amendments thereto.]**

5 Sec. ~~13~~ **[19.]** If any provision of sections 1 through 13, and amend-
6 ments thereto, or the application thereof to any persons or circumstances
7 is held invalid, such invalidity shall not affect other provisions or appli-
8 cation of the act which can be given effect without the invalid provisions
9 or application and to this end the provisions of sections 1 through ~~13~~ **[19]**,
10 and amendments thereto, are declared to be severable.

11 Sec. ~~14~~ **[20.]** This act shall take effect and be in force from and after
12 its publication in the statute book.