

HOUSE BILL No. 2407

By Committee on Federal and State Affairs

3-11

1 AN ACT concerning state infrastructure projects; allowing for public-
2 private agreements.

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

5 Section 1. As used in this act, unless the context otherwise requires:

6 (a) "Agency head" means the chief administrative officer of a state
7 agency;

8 (b) "agreement" means a public-private agreement;

9 (c) "contractor" means a person that has been selected to enter or has
10 entered into a public-private agreement with a state agency on behalf of
11 the state of Kansas for the development, financing, construction,
12 management or operation of a state infrastructure project pursuant to this
13 act;

14 (d) "offeror" means a person that responds to a request for proposals
15 under this act or a person that pursues a public-private agreement which is
16 not in response to a request for proposal;

17 (e) "person" means any individual, firm, association, joint venture,
18 partnership, estate, trust, syndicate, fiduciary, corporation or any other
19 legal entity or group, or combination thereof, whether foreign or domestic;

20 (f) "private contribution" means the supply by a private entity of
21 resources to accomplish all or any part of the work on a state infrastructure
22 project, including funds, financing, income, revenue, cost sharing,
23 technology, staff, equipment, expertise, data or engineering, construction
24 or maintenance services;

25 (g) "public-private agreement" means an agreement or contract
26 between a state agency on behalf of the state and a contractor, and all
27 schedules, exhibits and attachments thereto, whether or not entered into
28 pursuant to a competitive request for proposals process governed by
29 K.S.A. 75-3739 to 75-3741, and amendments thereto, and this act, for the
30 development, financing, construction, management or operation of a state
31 infrastructure project;

32 (h) "revenues" means all revenues, including, but not limited to: (1)
33 Income; (2) user fees; (3) earnings; (4) interest; (5) lease payments; (6)
34 allocations; (7) moneys from the federal government, the state, and units
35 of local government, including, but not limited to, federal, state and local
36 appropriations, grants, loans, lines of credit, and credit guarantees; (8)

1 bond proceeds; (9) equity investments; (10) service payments; or (11)
2 other receipts arising out of or in connection with the financing,
3 development, construction, management or operation of state
4 infrastructure projects;

5 (i) "state" means the state of Kansas;

6 (j) "state agency" or "agency" means a cabinet agency in the state;

7 (k) "state infrastructure" means:

8 (1) The state transportation infrastructure and related systems,
9 including highways and toll roads open to the public and associated rights-
10 of-way, bridges, vehicles, equipment, park and ride lots, transit stations,
11 transportation management systems, intelligent vehicle highway systems
12 and other ground transportation systems;

13 (2) flood control works and works for the conservation or
14 development of water resources; or

15 (3) any other work of internal improvement once authorized by a
16 separate bill passed by the affirmative vote of not less than $\frac{2}{3}$ of all
17 members then elected or appointed and qualified to each house;

18 (l) "user fees" means the tolls, rates, fees or other charges imposed by
19 the state or contractor for the use of all or part of the state infrastructure
20 project.

21 Sec. 2. (a) Notwithstanding any provision of law to the contrary, a
22 state agency on behalf of the state may, whether or not pursuant to a
23 competitive request for proposals process governed by K.S.A. 75-3739
24 through 75-3741, and amendments thereto, and this act, enter into one or
25 more public-private agreements with one or more contractors to develop,
26 finance, construct, manage or operate a state infrastructure project on
27 behalf of the state, and further pursuant to which the contractors may
28 receive certain revenues, including user fees in consideration of the
29 payment of moneys to the state for that right.

30 (b) Before taking any action in connection with the development,
31 financing, maintenance or operation of a state infrastructure project, a
32 contractor shall enter into a public-private agreement.

33 (c) The term of a public-private agreement, including all extensions,
34 shall be no more than 99 years.

35 (d) The term of a public-private agreement may be extended, but only
36 if the extension is specifically authorized by enactment of the Kansas
37 legislature.

38 Sec. 3. (a) If a state agency, on behalf of the state, decides to select a
39 contractor through a competitive request for proposals process governed
40 by the provisions of K.S.A. 75-3739 through 75-3741, and amendments
41 thereto, and this act, then the request for proposals shall meet the
42 requirements of this section.

43 (b) The competitive request for proposals process shall, at a

1 minimum, solicit statements of qualification and proposals from offerors.

2 (c) The competitive request for proposals process shall, at a
3 minimum, take into account the following criteria:

4 (1) The offeror's plan for the state infrastructure project;

5 (2) the offeror's current and past business practices; and

6 (3) the offeror's poor or inadequate past performance in developing,
7 financing, constructing, managing or operating infrastructure projects or
8 other public assets.

9 (d) A state agency shall not include terms in the request for proposals
10 that provide an advantage, whether directly or indirectly, to any contractor
11 presently providing goods, services or equipment to the agency.

12 (e) Before awarding a public-private agreement to an offeror, the state
13 agency shall schedule and hold a public hearing or hearings on the
14 proposed public-private agreement and give public notice of the hearing or
15 hearings at least seven days before the hearing. The notice must include
16 the following:

17 (1) The date, time and place of the hearing and the address of the
18 agency;

19 (2) the subject matter of the hearing;

20 (3) a description of the agreement that may be awarded; and

21 (4) the recommendation that has been made to select an offeror as the
22 contractor for the state infrastructure project.

23 At the hearing, the agency shall allow the public to be heard on the
24 subject of the hearing.

25 (f) After the procedures required in this section have been completed,
26 the agency shall make a determination as to whether the offeror should be
27 designated as the contractor for the state infrastructure project and shall
28 submit the decision to the agency head. After review of the agency's
29 determination, the agency head may accept or reject the determination. If
30 the agency head accepts the determination of the agency, the agency head
31 shall designate the offeror for the state infrastructure project.

32 Sec. 4. Nothing in this act shall require a state agency to solicit
33 offerors through a competitive request for proposals process. The agency
34 may enter into an agreement with a contractor where a competitive request
35 for proposals has not been utilized.

36 Sec. 5. The public-private agreement shall include all of the
37 following:

38 (a) The term of the public-private agreement that is consistent with
39 section 2, and amendments thereto;

40 (b) the powers, duties, responsibilities, obligations and functions of
41 the state agency and the contractor;

42 (c) compensation or payments to the agency, if applicable;

43 (d) compensation or payments to the contractor;

1 (e) a provision specifying that the agency:

2 (1) Has ready access to information regarding the contractor's
3 powers, duties, responsibilities, obligations and functions under the public-
4 private agreement;

5 (2) has the right to demand and receive information from the
6 contractor concerning any aspect of the contractor's powers, duties,
7 responsibilities, obligations and functions under the public-private
8 agreement; and

9 (3) has the authority to direct or countermand decisions by the
10 contractor at any time;

11 (f) a provision imposing an affirmative duty on the contractor to
12 provide the state agency with any information the contractor reasonably
13 believes the agency would want to know or would need to know to enable
14 the agency to exercise its powers, carry out its duties, responsibilities and
15 obligations, and perform its functions under this act or the public-private
16 agreement or as otherwise required by law;

17 (g) a provision requiring the contractor to provide the state agency
18 with advance notice of any decision that bears significantly on the public
19 interest so the agency has a reasonable opportunity to evaluate and
20 countermand that decision pursuant to this section;

21 (h) a requirement that the state agency monitor and oversee the
22 contractor's practices and take action that the agency considers appropriate
23 to ensure that the contractor is in compliance with the terms of the public-
24 private agreement;

25 (i) the authority of the state agency to enter into contracts with third
26 parties;

27 (j) a provision governing the contractor's authority to negotiate and
28 execute subcontracts with third parties;

29 (k) the authority of the contractor to impose user fees and the
30 amounts of those fees;

31 (l) a provision governing the deposit and allocation of revenues
32 including user fees;

33 (m) timelines, deadlines and scheduling; and

34 (n) all other terms, conditions and provisions acceptable to the state
35 agency that the agency deems necessary and proper and in the public
36 interest.

37 Sec. 6. A state agency may terminate a public-private agreement if
38 the contractor or any executive employee of the contractor is found guilty
39 of any criminal offense related to the conduct of its business, or the
40 regulation thereof, in any jurisdiction. For purposes of this section, an
41 "executive employee" is: (1) The president, chairperson, chief executive
42 officer or chief financial officer; (2) any employee with executive
43 decision-making authority over the long-term or day-to-day affairs of the

1 contractor; or (3) any employee whose compensation or evaluation is
2 determined in whole or in part by the award of the public-private
3 agreement.

4 Sec. 7. All moneys received by a state agency from a contractor, or
5 any other source outside the state treasury, in connection with a state
6 infrastructure project may be placed in the state treasury or may be
7 maintained in interest-bearing accounts within or without the state until
8 expended or otherwise disposed of by the agency head.

9 Sec. 8. No user fees may be imposed by the contractor except as set
10 forth in the public-private agreement.

11 Sec. 9. (a) All law enforcement officers of the state and of each
12 affected local jurisdiction have the same power and jurisdiction within the
13 boundaries of the state infrastructure project as they have in their
14 respective areas of jurisdiction.

15 (b) Law enforcement officers shall have access to the state
16 infrastructure project at any time for the purpose of exercising the law
17 enforcement officers' powers and jurisdiction.

18 (c) The traffic and motor vehicle laws of the state of Kansas or, if
19 applicable, any local jurisdiction shall be the same as those applying to
20 conduct of highways in the state or the local jurisdiction.

21 (d) Punishment for infractions and other offenses shall be as
22 prescribed by law for conduct occurring on highways of the state or the
23 local jurisdiction.

24 Sec. 10. (a) A state agency shall terminate the contractor's authority
25 and duties under the public-private agreement on the date set forth in the
26 public-private agreement.

27 (b) Upon termination of the public-private agreement, the authority
28 and duties of the contractor under this act cease, except for those duties
29 and obligations that extend beyond the termination, as set forth in the
30 public-private agreement.

31 Sec. 11. This act shall take effect and be in force from and after its
32 publication in the statute book.