

Public-Private Partnerships at Correctional Institutions; HB 2401

HB 2401 authorizes 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 includes 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 defines the terms “faith-based organization,” “public-private partnership,” “public-private project,” “private entity,” “secretary,” and “spiritual needs.”

The bill also defines 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 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 authorizes 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 requires 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 requires 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 requires the Secretary to advise and consult the Joint Committee on State Building Construction prior to start of the project.

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

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

The bill requires 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 the 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 requires the Secretary to prepare a budget for any proposed project. The bill requires 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 requires the budget to include any Department costs for such projects in annual 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 also allows 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 specifies the board of directors of the corporation will consist of representatives of the Department and the Department of Administration.

Private Entity Qualification and Party Responsibilities (New Section 4)

The bill requires 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 requires 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 provides 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 amends 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 further clarifies the provisions will not apply to the procurement process in continuing law for engineering services.

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