AN ACT relating to energy conservation measures; concerning contracts or lease-purchase agreements by state agencies or political subdivisions; limitations on such agreements and review by attorney general; amending K.S.A. 2014 Supp. 72-6760, 72-6760h and 75-37,125 and repealing the existing sections.

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

New Section 1. (a) Every contract or lease-purchase agreement for energy conservation measures pursuant to K.S.A. 75-37,125, and amendments thereto, made by a school district board shall be submitted to the state corporation commission for approval and validation. Each school district board shall provide copies of plans of the proposed energy conservation measure to the state corporation commission for review. No school district board may enter into a contract for an energy conservation measure unless such measure has been approved and validated by the state corporation commission. Plans submitted under this subsection shall be retained and maintained by the state corporation commission.

(b) (1) Upon request by any person, the attorney general shall review any contract or lease-purchase agreement for energy conservation measures pursuant to K.S.A. 75-37,125, and amendments thereto, made by a political subdivision, including, but not limited to, such agreements made prior to the effective date of this act. The contract or lease-purchase agreement and plans shall be promptly submitted to the attorney general by the political subdivision and the private party or parties to the agreement. Notwithstanding any other provision of law, upon request by the attorney general, the state corporation commission shall provide the attorney general with the agreement or plans retained by the state corporation commission. The attorney general shall determine whether the agreement is in proper form and compatible with the laws of this state. The attorney general shall approve any agreement submitted under this subsection unless the attorney general finds that it does not meet the conditions set forth in K.S.A. 75-32,125, and amendments thereto, or other applicable laws of this state, and shall advise in writing addressed to the requestor, the state corporation commission, the governing bodies of the political subdivision and the private entities concerned, within 30 days of the receipt of an agreement submitted under this subsection, the respects in...
which the agreement fails to meet the requirements of law. Failure to so
disapprove an agreement submitted under this subsection within 30 days
of its submission shall constitute approval thereof. On and after July 1,
2015, no political subdivision may enter into a contract or lease-purchase
agreement for energy conservation measures pursuant to K.S.A. 75-
32,125, and amendments thereto, unless such agreement has been
submitted to and approved by the attorney general.

(2) A contract or lease-purchase agreement entered into or that has
been entered into in violation of the laws of this state shall be void. If the
attorney general finds an agreement submitted hereunder is in violation of
the laws of this state, the attorney general shall file a compliant with the
state corporation commission and take such other actions before the state
corporation commission or a court of competent jurisdiction as necessary
under civil law to have the agreement declared void, enjoin further work if
work is ongoing and make the state whole for the improper use of state
funds.

(c) The attorney general is hereby authorized to fix, charge and
collect fees for review and examination of the contracts and lease-purchase
agreements submitted to the attorney general pursuant to subsection (b).
Fees for such review and examination shall be fixed in order to recover all
or part of the direct operating expenses incurred therefor. All such fees
received shall be remitted to the state treasurer in accordance with the
provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
each such remittance, the state treasurer shall deposit the entire amount in
the state treasury to the credit of the energy conservation measure review
fee fund, which is hereby created. All expenditures from the energy
conservation measure review fee fund shall be made in accordance with
appropriation acts upon warrants of the director of accounts and reports
issued pursuant to vouchers approved by the attorney general or a person
or persons designated by the attorney general.

Sec. 2. K.S.A. 2014 Supp. 72-6760 is hereby amended to read as
follows: 72-6760. (a) Except as provided by this section and K.S.A. 72-
6760b, no expenditure involving an amount greater than $20,000 for
construction, reconstruction or remodeling or for the purchase of materials,
goods or wares shall be made by the board of education of any school
district except upon sealed proposals, and to the lowest responsible bidder,
except that no expenditure involving any amount for energy conservation
measures pursuant to K.S.A. 75-37,125, and amendments thereto, shall be
made by the board of education of any school district except upon sealed
proposals, and to the lowest responsible bidder.

(b) The provisions of subsection (a) do not apply to expenditures by a
board of education for the purchase of:

(1) Services;
(2) products required to be purchased under the provisions of K.S.A. 75-3317 through 75-3322, and amendments thereto;
(3) educational materials directly related to curriculum and secured by copyright;
(4) motor fuels required to provide or furnish transportation;
(5) food and foodstuffs necessary for the implementation or operation of any child nutrition program;
(6) articles or products that are produced, manufactured or provided by inmates under the prison-made goods act of Kansas;
(7) natural gas that will be consumed in buildings owned or operated by the school district;
(8) materials, goods or wares required for reconstructing, remodeling, repairing or equipping buildings when such purchase has been necessitated by the occurrence of a loss against which the board of education has purchased property or casualty insurance; and
(9) materials, goods or wares which are purchased:
   (A) From vendors who have entered into contracts with the state director of purchases pursuant to state purchasing statutes for purchases by state agencies;
   (B) under the same pricing provisions established in the state contracts, subject to agreement of the vendor to honor the state contract prices; and
   (C) under the same pricing provisions established in federal, national or other state contracts facilitated by a federal or local governmental entity or agency, subject to:
      (i) Agreement of the vendor to honor the contract prices; and
      (ii) approval by the board of education for expenditures in an amount greater than $20,000.
(c) Whenever the board of education of any school district lets bids for the purchase of materials, goods or wares and bids are submitted by bidders domiciled within the school district and by bidders domiciled outside the school district and the low bid is submitted by a bidder domiciled outside the school district, the school district domiciliary which submitted the lowest bid may be deemed the preferred bidder and awarded the bid if:
   (1) The quality, suitability and usability of the materials, goods or wares are equal;
   (2) the amount of the bid of the school district domiciliary is not more than 1% greater than the amount of the low bid; and
   (3) the school district domiciliary agrees to meet the low bid by filing a written agreement to that effect within 72 hours after receiving notification of being deemed the preferred bidder.
(d) The provisions of subsection (c) do not apply to expenditures for
construction, reconstruction or remodeling.

Sec. 3. K.S.A. 2014 Supp. 72-6760h is hereby amended to read as follows: 72-6760h. (a) The provisions of the Kansas unified school district alternative project delivery building construction procurement act shall not apply to the process of designing, constructing, altering or repairing stand-alone parking lots.

(b) The provisions of the Kansas unified school district alternative project delivery building construction procurement act shall not apply to expenditures for energy conservation measures, as defined in K.S.A. 75-37,125, and amendments thereto.

Sec. 4. K.S.A. 2014 Supp. 75-37,125 is hereby amended to read as follows: 75-37,125. (a) As used in this act:

(1) "Federal entity" means the government of the United States of America or any bureau, department, instrumentality or other agency of the federal government.

(2) "Political subdivision" shall have the meaning ascribed thereto in subsection (o) of K.S.A. 74-8902, and amendments thereto.

(3) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of this state.

(4) "Energy conservation measure" means an energy study, audit, improvement or equipment which is designed to provide energy and operational cost savings at least equivalent to the amount expended by a participating political subdivision or state agency for such energy study, audit, improvement or equipment over a period of not more than 30 years after the date such improvement or equipment is installed or becomes operational, as the case may be.

(b)(f) Subject to the provisions of subsection (c), a political subdivision or state agency, which include the board of regents and a regent's institution and a community or technical college, may enter into a contract or lease-purchase agreement for an energy conservation measure which meets the criteria of this section. In addition to any other authority provided by law a political subdivision or state agency may solicit proposals to contract for an energy conservation measure by advertising for proposals and qualifications in a newspaper of general circulation or the Kansas register, and by sending requests for proposals to at least three vendors and negotiating a lease-purchase agreement with one or more vendors submitting a proposal thereto. Negotiations entered into pursuant to this section with individual vendors shall not be subject to the provisions of the open meetings act. After an agreement has been executed, the agreement and all proposals from vendors shall be open records available for public inspection in accordance with the open records act. A state agency may utilize the procedures prescribed in K.S.A. 75-
37,102, and amendments thereto, by the procurement negotiating
commitee to negotiate and contract for energy conservation measures.
Each state agency shall provide copies of plans of the proposed energy
conservation measure to the state corporation commission for review. No
state agency may enter into a contract for an energy conservation measure
unless such measure has been approved by the state corporation
commission. Plans submitted under this section shall be retained and
maintained by the state corporation commission.

(2) Upon request by any person, the attorney general shall review
contracts or lease-purchase agreements by state agencies approved by the
state corporation commission, and if the attorney general finds the
agreement is in violation of the laws of this state, the attorney general
shall file a complaint with the state corporation commission and take such
other actions before the state corporation commission or a court of
competent jurisdiction as necessary under civil law to have the agreement
declared void, enjoin further work if work is ongoing, and make the state
whole for the improper use of state funds. Within 30 days of the receipt of
the agreement to be reviewed, the attorney general shall advise in writing
addressed to the requestor, the state agency, the state corporation
commission and the private entities concerned, the respects in which the
agreement fails to meet the requirements of law. Failure to so disapprove
an agreement submitted hereunder within 30 days of its submission shall
constitute approval thereof. State agencies or private parties shall
promptly submit contracts or lease-purchase agreements to the attorney
general upon request. Notwithstanding any other provision of law, the
state corporation commission shall provide the attorney general with the
agreement or plans retained by the state corporate commission upon
request by the attorney general.

(c) Before executing any contract or finance, pledge, loan or lease-
purchase agreement under this section, the energy conservation contractor
shall provide the political subdivision or state agency with plans for the
proposed energy conservation measures prepared by an engineer licensed
to practice in Kansas. The energy conservation contractor shall also
provide a report of the calculations showing the estimated energy and
operational cost savings that would result from the proposed energy
conservation measures. Notwithstanding any provision contained in
K.S.A. 71-201 and 72-8225, and amendments thereto, or other provisions
of law, the board of education of any school district and the board of any
community college or technical college may not enter into a contract or
finance, pledge, loan or lease-purchase agreement for an energy
conservation measure for a period exceeding 10 years. Political
subdivisions and state agencies may include a provision in the contract
with an entity providing the energy conservation measure requiring such
entity to guarantee that the actual amount of savings of energy and
operational costs attributable to the energy conservation measure be not
less than the cost of the energy conservation measure over the time
specified including financing costs.
(d) Within the limits of appropriations available therefor, the state
corporation commission is authorized to provide grants for engineering
studies and energy conservation measures for political subdivisions and
state agencies.
(e) The state corporation commission, or its designee, may provide
administrative support and resources available under the facility
conservation improvement program under this section or K.S.A. 75-37,111
et seq., and amendments thereto, as requested by school districts, private
and public colleges in Kansas, political subdivisions, state agencies or
federal entities for purposes of this section. The state corporation
commission, or its designee, may fix, charge and collect reasonable fees
for any administrative support and resources or other services provided by
the state corporation commission, or its designee, under this subsection.
(f) The provisions of the cash basis law and K.S.A. 79-2925, and
amendments thereto, shall not apply to any contract or lease-purchase
agreement entered into pursuant to this section.
(g) Expenditures for energy conservation measures involving an
amount greater than $20,000 shall be made only upon sealed proposals,
and to the lowest responsible bidder.
Sec. 5. K.S.A. 2014 Supp. 72-6760, 72-6760h and 75-37,125 are
hereby repealed.
Sec. 6. This act shall take effect and be in force from and after its
publication in the statute book.