

HOUSE BILL No. 2418

By Committee on Appropriations

4-2

1 AN ACT relating to energy conservation measures; concerning contracts
2 or lease-purchase agreements by state agencies or political
3 subdivisions; limitations on such agreements and review by attorney
4 general; amending K.S.A. 2014 Supp. 72-6760, 72-6760h and 75-
5 37,125 and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

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

18 (b) (1) Upon request by any person, the attorney general shall review
19 any contract or lease-purchase agreement for energy conservation
20 measures pursuant to K.S.A. 75-37,125, and amendments thereto, made by
21 a political subdivision, including, but not limited to, such agreements made
22 prior to the effective date of this act. The contract or lease-purchase
23 agreement and plans shall be promptly submitted to the attorney general
24 by the political subdivision and the private party or parties to the
25 agreement. Notwithstanding any other provision of law, upon request by
26 the attorney general, the state corporation commission shall provide the
27 attorney general with the agreement or plans retained by the state
28 corporation commission. The attorney general shall determine whether the
29 agreement is in proper form and compatible with the laws of this state. The
30 attorney general shall approve any agreement submitted under this
31 subsection unless the attorney general finds that it does not meet the
32 conditions set forth in K.S.A. 75-32,125, and amendments thereto, or other
33 applicable laws of this state, and shall advise in writing addressed to the
34 requestor, the state corporation commission, the governing bodies of the
35 political subdivision and the private entities concerned, within 30 days of
36 the receipt of an agreement submitted under this subsection, the respects in

1 which the agreement fails to meet the requirements of law. Failure to so
2 disapprove an agreement submitted under this subsection within 30 days
3 of its submission shall constitute approval thereof. On and after July 1,
4 2015, no political subdivision may enter into a contract or lease-purchase
5 agreement for energy conservation measures pursuant to K.S.A. 75-
6 32,125, and amendments thereto, unless such agreement has been
7 submitted to and approved by the attorney general.

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

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

31 Sec. 2. K.S.A. 2014 Supp. 72-6760 is hereby amended to read as
32 follows: 72-6760. (a) Except as provided by this section and K.S.A. 72-
33 6760b, no expenditure involving an amount greater than \$20,000 for
34 construction, reconstruction or remodeling or for the purchase of materials,
35 goods or wares shall be made by the board of education of any school
36 district except upon sealed proposals, and to the lowest responsible bidder,
37 *except that no expenditure involving any amount for energy conservation*
38 *measures pursuant to K.S.A. 75-37,125, and amendments thereto, shall be*
39 *made by the board of education of any school district except upon sealed*
40 *proposals, and to the lowest responsible bidder.*

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

43 (1) Services;

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

1 construction, reconstruction or remodeling.

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

7 (b) *The provisions of the Kansas unified school district alternative*
8 *project delivery building construction procurement act shall not apply to*
9 *expenditures for energy conservation measures, as defined in K.S.A. 75-*
10 *37,125, and amendments thereto.*

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

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

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

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

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

28 (b)(1) Subject to the provisions of subsection (c), a political
29 subdivision or state agency, which include the board of regents and a
30 regent's institution and a community or technical college, may enter into a
31 contract or lease-purchase agreement for an energy conservation measure
32 which meets the criteria of this section. In addition to any other authority
33 provided by law a political subdivision or state agency may solicit
34 proposals to contract for an energy conservation measure by advertising
35 for proposals and qualifications in a newspaper of general circulation or
36 the Kansas register, and by sending requests for proposals to at least three
37 vendors and negotiating a lease-purchase agreement with one or more
38 vendors submitting a proposal thereto. Negotiations entered into pursuant
39 to this section with individual vendors shall not be subject to the
40 provisions of the open meetings act. After an agreement has been
41 executed, the agreement and all proposals from vendors shall be open
42 records available for public inspection in accordance with the open records
43 act. A state agency may utilize the procedures prescribed in K.S.A. 75-

1 37,102, and amendments thereto, by the procurement negotiating
2 committee to negotiate and contract for energy conservation measures.
3 Each state agency shall provide copies of plans of the proposed energy
4 conservation measure to the state corporation commission for review. No
5 state agency may enter into a contract for an energy conservation measure
6 unless such measure has been approved by the state corporation
7 commission. Plans submitted under this section shall be retained and
8 maintained by the state corporation commission.

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

29 (c) Before executing any contract or finance, pledge, loan or lease-
30 purchase agreement under this section, the energy conservation contractor
31 shall provide the political subdivision or state agency with plans for the
32 proposed energy conservation measures prepared by an engineer licensed
33 to practice in Kansas. The energy conservation contractor shall also
34 provide a report of the calculations showing the estimated energy and
35 operational cost savings that would result from the proposed energy
36 conservation measures. Notwithstanding any provision contained in
37 K.S.A. 71-201 and 72-8225, and amendments thereto, or other provisions
38 of law, the board of education of any school district and the board of any
39 community college or technical college may *not* enter into a contract or
40 finance, pledge, loan or lease-purchase agreement for an energy
41 conservation measure for a period exceeding—10 5 years. Political
42 subdivisions and state agencies may include a provision in the contract
43 with an entity providing the energy conservation measure requiring such

1 entity to guarantee that the actual amount of savings of energy and
2 operational costs attributable to the energy conservation measure be not
3 less than the cost of the energy conservation measure over the time
4 specified including financing costs.

5 (d) Within the limits of appropriations available therefor, the state
6 corporation commission is authorized to provide grants for engineering
7 studies and energy conservation measures for political subdivisions and
8 state agencies.

9 (e) The state corporation commission, or its designee, may provide
10 administrative support and resources available under the facility
11 conservation improvement program under this section or K.S.A. 75-37,111
12 et seq., and amendments thereto, as requested by school districts, private
13 and public colleges in Kansas, political subdivisions, state agencies or
14 federal entities for purposes of this section. The state corporation
15 commission, or its designee, may fix, charge and collect reasonable fees
16 for any administrative support and resources or other services provided by
17 the state corporation commission, or its designee, under this subsection.

18 (f) The provisions of the cash basis law and K.S.A. 79-2925, and
19 amendments thereto, shall not apply to any contract or lease-purchase
20 agreement entered into pursuant to this section.

21 (g) *Expenditures for energy conservation measures involving an*
22 *amount greater than \$20,000 shall be made only upon sealed proposals,*
23 *and to the lowest responsible bidder.*

24 Sec. 5. K.S.A. 2014 Supp. 72-6760, 72-6760h and 75-37,125 are
25 hereby repealed.

26 Sec. 6. This act shall take effect and be in force from and after its
27 publication in the statute book.