

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2010

## SENATE BILL No. 446

By Committee on Ways and Means

1-25

12 AN ACT concerning ~~the department of administration, relating to ap-~~  
13 ~~proval of state contracts~~ **state contracts; relating to procurement**  
14 **of goods and services for state agencies; bid specifications; cre-**  
15 **ating the council on efficient government**; amending K.S.A. 20-  
16 156, 20-1a13, 74-8704, 74-8709, 75-2540, 75-4101a, 76-720 and 76-  
17 770 and K.S.A. 2009 Supp. 40-3403, 74-8705, 74-99b16, 75-37,143,  
18 75-4101, 75-4105, 75-5288, 76-760, 76-769 and 76-786 and repealing  
19 the existing sections; also repealing K.S.A. 75-3744.

20

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

22 **New Section 1. Sections 1 through ~~14~~ [20], and amendments**  
23 **thereto, shall be known and may be cited as the council on efficient**  
24 **government act.**

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

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

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

35 **(3) the state government should not replicate, duplicate or**  
36 **compete with the federal government or local units of government**  
37 **that provide the same goods and services;**

38 **(4) there are certain functions and operations of state govern-**  
39 **ment that are inherently governmental and cannot be outsourced,**  
40 **and these activities are intimately related to the public interest;**  
41 **and**

42 **(5) when activities are clearly not governmental functions and**  
43 **operations, the state government should conduct a rigorous com-**

1 **parison of private business or not-for-profit organizational costs**  
2 **with the costs of the state government providing those functions**  
3 **and operations.**

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

5 **(1) To ensure that each state agency focuses on its core mission,**  
6 **and delivers goods and services effectively and efficiently by lev-**  
7 **eraging resources and contracting with private business suppliers**  
8 **or not-for-profit organizations if those entities can more effectively**  
9 **and efficiently provide such goods and services thereby reducing**  
10 **the cost of government while expanding those services to the**  
11 **greatest number of citizens;**

12 **(2) to develop a comprehensive and detailed process to analyze**  
13 **opportunities to improve the efficiency, cost-effectiveness and**  
14 **quality of state governmental services, operations, functions and**  
15 **activities; and**

16 **(3) to evaluate for feasibility, cost-effectiveness and efficiency,**  
17 **business cases that potentially could be outsourced and make rec-**  
18 **ommendations to state agencies prior to the outsourcing of goods**  
19 **or services.**

20 **New Sec. 3. As used in sections 1 through ~~14~~ [20], and amend-**  
21 **ments thereto:**

22 **(a) “Activity” means the provision of goods or services or the**  
23 **performance of any function or operation by a state agency.**

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

27 **(c) “Business case” means any proposal to outsource a state**  
28 **agency activity or eliminate replication or duplication of a state**  
29 **agency activity and operations carried out by a private business,**  
30 **not-for-profit organization or other government agency.**

31 **(d) “Contractor” means any private business or not-for-profit**  
32 **organization that contracts with a state agency to perform an ac-**  
33 **tivity previously performed by such state agency.**

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

38 **New Sec. 4. (a) There is hereby created a body politic and cor-**  
39 **porate to be known as the council on efficient government. The**  
40 **council on efficient government is hereby constituted a public in-**  
41 **strumentality and the exercise of the authority and powers con-**  
42 **ferred by this act shall be deemed and held to be the performance**  
43 **of an essential governmental function.**

- 1       **(b) The council shall consist of 11 members as follows:**  
2       **(1) One member, who shall be either the lieutenant governor**  
3 **or the chief executive of a state agency, who shall be appointed by**  
4 **the governor;**  
5       **(2) two members, who shall be engaged in private business and**  
6 **are not members of the legislature, appointed by the governor;**  
7       **(3) three members, who shall be engaged in private business**  
8 **and only one of whom may be a member of the legislature, ap-**  
9 **pointed by the president of the senate;**  
10       **(4) three members, who shall be engaged in private business**  
11 **and only one of whom may be a member of the legislature, ap-**  
12 **pointed by the speaker of the house of representatives;**  
13       **(5) one member, who shall be engaged in private business and**  
14 **who shall not be a member of the legislature, appointed by the**  
15 **minority leader of the senate; and**  
16       **(6) one member, who shall be engaged in private business and**  
17 **who shall not be a member of the legislature, appointed by the**  
18 **minority leader of the house of representatives.**  
19       **(c) Members shall be subject to confirmation by the senate as**  
20 **provided in K.S.A. 75-4315b, and amendments thereto. Except as**  
21 **provided by K.S.A. 46-2601, and amendments thereto, no person**  
22 **appointed to the council shall exercise any power, duty or function**  
23 **as a member of the council until confirmed by the senate.**  
24       **(d) Members shall serve for a term of two years. Terms of mem-**  
25 **bers appointed pursuant to this section shall expire on March 15.**  
26 **In the case of the member who is a state official, such member**  
27 **shall serve for a term of two years, or until such member ceases to**  
28 **hold public office, whichever occurs first. Members shall serve un-**  
29 **til a successor is appointed and confirmed.**  
30       **(e) After the expiration of a member's term, or whenever a**  
31 **vacancy occurs a member shall be appointed as described in sub-**  
32 **section (a). In the event of a vacancy the appointment shall be for**  
33 **the remainder of the unexpired portion of the term. Any member**  
34 **is eligible for reappointment for successive two-year terms.**  
35       **(f) No member shall appoint a designee to serve in such mem-**  
36 **ber's place on the council.**  
37       **(g) The council shall annually elect a member as chairperson.**  
38 **The member appointed pursuant to paragraph (a)(1) and any**  
39 **member who is a member of the legislature is not eligible to serve**  
40 **as chairperson.**  
41       **(h) The council shall meet at least four times a year at the call**  
42 **of the chairperson. A quorum shall consist of a majority of the**  
43 **members of the council.**

- 1 (i) Members attending council meetings shall be entitled to  
2 compensation and expenses as provided in K.S.A. 75-3223, and  
3 amendments thereto.
- 4 New Sec. 5. (a) In order to achieve its purpose as provided in  
5 this act, the council on efficient government shall:
- 6 (1) Review and evaluate the possibility of outsourcing goods or  
7 services provided by a state agency to a private business or not-  
8 for-profit organization that is able to provide the same type of good  
9 or service and whether such action would result in cost savings to  
10 the state;
- 11 (2) review and evaluate the possibility of outsourcing opera-  
12 tions or functions of a state agency to a private business or not-  
13 for-profit organization that is able to more efficiently and cost-  
14 effectively perform such operation or function;
- 15 (3) review and evaluate instances where a state agency is pro-  
16 viding goods or services in competition with one or more private  
17 businesses to determine ways to eliminate such competition;
- 18 (4) review and evaluate instances where a state agency is pro-  
19 viding goods or services that replicate, duplicate or compete with  
20 one or more not-for-profit organizations or federal or local units  
21 of government;
- 22 (5) make any requests it deems necessary to state agencies for  
23 an inventory of such agency's activities that may be outsourced, or  
24 that compete with, replicate or duplicate activities provided by  
25 private entities or federal or local units of government;
- 26 (6) develop and implement a standard process for reviewing  
27 business cases pursuant to this act;
- 28 (7) make recommendations to state agencies regarding the  
29 outsourcing of operations, functions and the provision of goods  
30 and services based on the council's review and evaluation of busi-  
31 ness cases pursuant to this act; and
- 32 (8) identify and distribute information regarding the best prac-  
33 tices in outsourcing efforts to state agencies.
- 34 (b) The council may appoint advisory groups, provided, at least  
35 one member of the council is appointed to each such group.
- 36 (c) The council shall annually prepare and submit a report to  
37 the governor, the committee on ways and means of the senate and  
38 the committee on appropriations of the house of representatives.  
39 The report shall be submitted no later than January 15, and shall  
40 contain details of the council's activities for the immediately pre-  
41 ceding year and include the following:
- 42 (1) Recommendations on methods of delivering government  
43 services that would improve the efficiency, effectiveness and de-

- 1 livery of government services;
- 2 (2) outsourcing efforts of state agencies, including the number  
3 of business cases reviewed, those recommended for outsourcing  
4 and the state agency action on the business case; and
- 5 (3) information on all outsourcing contracts entered into the  
6 preceding year, including, the dollar value of each outsourcing  
7 contract, descriptions of performance results, any breach of con-  
8 tract or inadequate performance, and the status of extensions, re-  
9 newals and amendments of outsourcing contracts.
- 10 New Sec. 6. The staff of the legislative research department  
11 shall provide such assistance as may be requested by the council  
12 on efficient government.
- 13 New Sec. 7. (a) A business case may be submitted by the gov-  
14 ernor, any member of the legislature, any state agency, a private  
15 business, a not-for-profit organization or any government entity  
16 that is not a state agency. A business case shall be submitted in the  
17 manner and form prescribed by the council.
- 18 (b) A business case shall include the following:
- 19 (1) A description of the state agency activity the council is to  
20 review and evaluate;
- 21 (2) a description of the private market for such activity; and
- 22 (3) a proposal as to the price to be paid by the state agency if  
23 such activity were outsourced.
- 24 (c) If the business case is submitted by a state agency, the fol-  
25 lowing shall also be included in the business case:
- 26 (1) A description and analysis of the agency's performance with  
27 respect to such activity;
- 28 (2) an analysis comparing the potential costs and savings to the  
29 agency between outsourcing the activity and continuing to per-  
30 form such activity;
- 31 (3) a citation to existing legal authority for outsourcing such  
32 activity;
- 33 (4) a transition plan that addresses changes in personnel,  
34 equipment, office location and communication with clients and the  
35 general public should such activity be outsourced;
- 36 (5) a description of any legislative action necessary to accom-  
37 plish the outsourcing of such activity; and
- 38 (6) a description of specific performance standards that a con-  
39 tractor must meet in performing such activity, including:
- 40 (A) Specific and measurable goals to be met by the contractor;
- 41 (B) a plan to ensure compliance by the contractor with all ap-  
42 plicable laws and regulations; and
- 43 (C) a contingency plan addressing the contractor's nonper-

1 **formance or inadequate performance of such activity.**

2 **(d) If the business case is submitted by an entity other than a**  
3 **state agency, the council shall send a copy of the submitted busi-**  
4 **ness case to the state agency currently performing the activity in**  
5 **question. The state agency shall have 30 days from receipt of the**  
6 **business case to submit a response to the council. The response**  
7 **shall include those items set forth in subsection (c).**

8 **(e) The council may review and evaluate any business case that**  
9 **is submitted to the council to determine: (1) If there is competition,**  
10 **replication or duplication of an activity by a state agency with a**  
11 **private business, not-for-profit organization or other government**  
12 **entity; (2) whether such activity may be outsourced by such state**  
13 **agency; and (3) the costs and savings that will likely result from**  
14 **such outsourcing.**

15 **(f) In conducting its review and evaluation of a business case**  
16 **the council shall consider the state agency's response submitted**  
17 **pursuant to subsection (d), if applicable, and determine whether**  
18 **the activity in question is an inherent governmental function that**  
19 **cannot be outsourced, or a commercial activity which may be per-**  
20 **formed by an entity other than the state agency. The council may**  
21 **hold public hearings, seek advice from advisory groups and re-**  
22 **quest additional information from the state agency.**

23 **(g) Any member of the council that is either employed by the**  
24 **state agency which is performing the activity that is the subject of**  
25 **a business case under review, or is affiliated with a private business**  
26 **or not-for-profit organization that could perform such activity shall**  
27 **not participate in the review and evaluation of that particular busi-**  
28 **ness case.**

29 **(h) Upon completion of its review and evaluation the council**  
30 **shall prepare a report on its findings and recommendations. Cop-**  
31 **ies of the council's final report on a business case shall be sent to**  
32 **the entity that initially submitted the business case, and the state**  
33 **agency which performs the activity that is the subject of the busi-**  
34 **ness case.**

35 **(i) Any state agency receiving a report pursuant to subsection**  
36 **(h) shall submit a response to the council within 45 days after re-**  
37 **ceipt of the report. The response shall include the agency decision**  
38 **with respect to outsourcing or eliminating the activity, the reasons**  
39 **supporting the decision and the implementation date, if any.**

40 **New Sec. 8. Any contract entered into by a state agency with**  
41 **a private business or not-for-profit organization which is an agree-**  
42 **ment for the private business or not-for-profit organization to per-**  
43 **form an activity previously performed by the state agency shall**

1 include the following:

- 2 (a) A specific scope of work statement clearly identifying the  
3 activity to be performed by the contractor;
- 4 (b) if services are being provided, an agreement as to what  
5 constitutes adequate provision of such services, and the ability of  
6 the state agency to resume provision of such services if not ade-  
7 quately provided by the contractor;
- 8 (c) a specific transition plan providing for the transfer of the  
9 activities in question to the contractor;
- 10 (d) specific and measurable performance standards that must  
11 be met by the contractor;
- 12 (e) a provision granting the state agency access to all relevant  
13 documents and records of the contractor necessary for the pur-  
14 poses of verifying the contractor is meeting all performance stan-  
15 dards and auditing the contractor's performance;
- 16 (f) a provision requiring the contractor to interview and con-  
17 sider for employment any state employee previously employed by  
18 the state agency who expresses an interest in such employment;  
19 and
- 20 (g) a contingency plan for transferring such activity back to the  
21 state agency in the event the contractor does not meet the required  
22 performance standards.

23 **New Sec. 9. (a)** When any contract for the purchase of goods  
24 or services by any state agency, as that term is defined in K.S.A.  
25 75-3701, and amendments thereto, is not awarded to a vendor af-  
26 ter such vendor has submitted the lowest bid for such contract, the  
27 director of purchases of the department of administration shall  
28 prepare a written explanation detailing the reasons why such ven-  
29 dor was not awarded the contract and why the deficiencies in such  
30 vendor's bid could not be remedied to the satisfaction of the di-  
31 rector. In the event the contract is awarded by a state agency other  
32 than the department of administration, such state agency shall pre-  
33 pare a written explanation detailing the reasons why such vendor  
34 was not awarded the contract and why the deficiencies in such  
35 vendor's bid could not be remedied to the satisfaction of the head  
36 of such state agency, and submit such written explanation to the  
37 director of purchases of the department of administration.

38 (b) On or before January 12, the director of purchases of the  
39 department of administration shall transmit to the standing com-  
40 mittee on appropriations of the house of representatives, the  
41 standing committee on ways and means of the senate and the coun-  
42 cil on efficient government a report that shall include all written  
43 explanations prepared in accordance with this section during the

1 immediately preceding year.

2 (c) The provisions of this section shall not apply to contracts  
3 that are subject to the provisions of K.S.A. 75-5801 et seq., and  
4 amendments thereto, or K.S.A. 75-1250 et seq., and amendments  
5 thereto, or to contracts in support of the planning, development  
6 or implementation of a road, bridge or public transportation con-  
7 struction program of the department of transportation.

8 New Sec. 10. (a) When any contract for the purchase of goods  
9 or services by any state agency, as that term is defined in K.S.A.  
10 75-3701, and amendments thereto, is not awarded to a vendor that  
11 is: (1) Domiciled in this state; (2) proposing to have the work which  
12 is the subject matter of the contract performed by employees sub-  
13 ject to Kansas income withholding taxes; and (3) subject to Kansas  
14 income taxes, the director of purchases of the department of ad-  
15 ministration shall prepare a written explanation detailing the rea-  
16 sons why such vendor was not awarded the contract and why the  
17 deficiencies in such vendor's bid could not be remedied to the  
18 satisfaction of the director. In the event the contract is awarded  
19 by a state agency other than the department of administration,  
20 such state agency shall prepare a written explanation detailing the  
21 reasons why such vendor was not awarded the contract and why  
22 the deficiencies in such vendor's bid could not be remedied to the  
23 satisfaction of the head of such state agency, and submit such writ-  
24 ten explanation to the director of purchases of the department of  
25 administration.

26 (b) On or before January 12, the director of purchases of the  
27 department of administration shall transmit to the standing com-  
28 mittee on appropriations of the house of representatives, the  
29 standing committee on ways and means of the senate and the coun-  
30 cil on efficient government a report that shall include all written  
31 explanations prepared in accordance with this section during the  
32 immediately preceding year.

33 (c) The provisions of this section shall not apply to contracts  
34 that are subject to the provisions of K.S.A. 75-5801 et seq., and  
35 amendments thereto, or K.S.A. 75-1250 et seq., and amendments  
36 thereto, or to contracts in support of the planning, development  
37 or implementation of a road, bridge or public transportation con-  
38 struction program of the department of transportation or to con-  
39 tracts for building construction.

40 (d) For purposes of this section, the term "building construc-  
41 tion" means furnishing labor, equipment, material or supplies  
42 used or consumed for the design, construction, alteration, reno-  
43 vation, repair or maintenance of a building or structure, including



1 multilevel parking structures and stand-alone parking lots.

2 New Sec. 11. (a) Any contract for the purchase of goods or  
3 services by any state agency, as that term is defined in K.S.A. 75-  
4 3701, and amendments thereto, which includes a provision for the  
5 automatic renewal or extension of such contract, shall be reviewed  
6 by the head of such agency to determine if such contract shall be  
7 allowed to be automatically renewed or extended. Such review  
8 shall include an evaluation of the cost savings the agency might  
9 benefit from if the agency were to terminate the contract and issue  
10 a new request for proposal. If the head of the state agency deter-  
11 mines that it is in the agency's best interest to allow the contract  
12 to be automatically renewed or extended, then the head of the  
13 state agency shall prepare a written explanation detailing the rea-  
14 sons why such contract was allowed to be automatically renewed  
15 or extended and submit such written explanation to the director  
16 of purchases of the department of administration.

17 (b) On or before January 12, the director of purchases of the  
18 department of administration shall transmit to the standing com-  
19 mittee on appropriations of the house of representatives, the  
20 standing committee on ways and means of the senate and the coun-  
21 cil on efficient government a report that shall include all written  
22 explanations prepared in accordance with this section during the  
23 immediately preceding year.

24 (c) The provisions of this section shall not apply to contracts  
25 that are subject to the provisions of K.S.A. 75-5801 et seq., and  
26 amendments thereto, or K.S.A. 75-1250 et seq., and amendments  
27 thereto, or to contracts in support of the planning, development  
28 or implementation of a road, bridge or public transportation con-  
29 struction program of the department of transportation.

30 New Sec. 12. The provisions of sections 1 through ~~14~~ [20], and  
31 amendments thereto, shall not apply to ~~any~~: (a) Any] activity con-  
32 ducted by or under the authority of the state board of regents, or  
33 to any contract entered into by the state board of regents or any  
34 postsecondary educational institution, as defined by K.S.A. 74-  
35 3201b, and amendments thereto; (b) the university of Kansas  
36 medical center; or (c) Kansas, Inc].

37 New Sec. 13. (a) The director of purchases and any state  
38 agency authorized by statute or by delegation of authority by the  
39 director of purchases to administer purchasing procedures using  
40 competitive bidding procedures for contracts for supplies, mate-  
41 rials, equipment and contractual services shall draft or cause to be  
42 drafted specifications for bids in a manner that does not limit the  
43 bidding, directly or indirectly, to any one specific contractor, sub-

1 contractor, manufacturer or supplier. When preparing specifica-  
2 tions for such purposes which require specific materials, products,  
3 items or services, the director of purchases and any such state  
4 agency shall use specific brand or trade names only for reference.  
5 When preparing specifications for contracts for supplies, materi-  
6 als, equipment and contractual services, the director of purchases  
7 and any such state agency shall specify all materials required by  
8 American national standards institute (ANSI) number or builders  
9 hardware manufacturers association (BHMA) product number. No  
10 product or manufacturer shall be given preference over any other  
11 product or manufacturer in any specifications prepared by or for  
12 the director of purchases or any such state agency for contracts  
13 for supplies, materials, equipment and contractual services.

14 (b) No specifications for bids to be administered by the direc-  
15 tor of purchases or by any state agency authorized by statute or  
16 by delegation of authority by the director of purchases to admin-  
17 ister purchasing procedures using competitive bidding procedu-  
18 res, shall be drafted or caused to be drafted by an outside speci-  
19 fication writer who is a representative, supplier, owner or  
20 employee of a manufacturer or who is in any other way associated  
21 or under contract with a manufacturer.

22 (c) The provisions of this section shall not apply to contracts  
23 that are subject to the provisions of K.S.A. 75-5801 et seq., and  
24 amendments thereto, or K.S.A. 75-1250 et seq., and amendments  
25 thereto, or to contracts in support of the planning, development  
26 or implementation of a road, bridge or public transportation con-  
27 struction program of the department of transportation or to con-  
28 tracts for building construction.

29 (d) For purposes of this section, the term “building construc-  
30 tion” means furnishing labor, equipment, material or supplies  
31 used or consumed for the design, construction, alteration, reno-  
32 vation, repair or maintenance of a building or structure, including  
33 multilevel parking structures and stand-alone parking lots.

34 [New Sec. 14. (a) All vendors shall verify the identity and em-  
35 ployment eligibility of all persons hired by completing and retain-  
36 ing pursuant to this section a federal form I-9 for each employee.  
37 For purposes of this section, the term employee shall not include  
38 any person providing services for the vendor as an independent  
39 contractor.

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

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

- 1 [(2) review documents establishing each employee's identity  
2 and eligibility to work to ensure that such documents reasonably  
3 appear:
- 4 [(A) To be genuine; and
  - 5 [(B) to relate to the individual presenting the documents;
  - 6 [(3) complete section 2 of the form I-9;
  - 7 [(4) complete section 3 of the form I-9;
  - 8 [(5) retain the form I-9 for three years after the date the person  
9 began work or one year after the person's employment is termi-  
10 nated, whichever is later; and
  - 11 [(6) make the form I-9 available for inspection by state or fed-  
12 eral officials upon request with three days notice.
- 13 [(c) The Kansas department of labor shall make the form I-9  
14 available to all vendors.
- 15 [(d) No action shall be brought by any person, city, county or  
16 state official against any vendor who complies with the provisions  
17 of subsections (a) and (b) relating in any way to the employment  
18 of an undocumented alien.
- 19 [(e) In the event that the form I-9 is amended or replaced after  
20 the enactment of this section, a vendor shall be considered in com-  
21 pliance with the provisions of subsections (a) and (b) if it completes  
22 and maintains the then current federal employment eligibility  
23 form consistent with all relevant federal laws and regulations.
- 24 [New Sec. 15. (a) A person or entity is considered to have com-  
25 plied with a requirement of sections 14 through 17, and amend-  
26 ments thereto, notwithstanding a technical or procedural failure  
27 to meet such requirement, if there was a good faith attempt to  
28 comply with the federal requirements found in title 8 of the United  
29 States code, section 1324a.
- 30 [(b) A person or entity which establishes that it has complied  
31 in good faith with respect to the hiring, recruiting or referral for  
32 employment of an alien in the United States has established an  
33 affirmative defense under sections 14 through 17, and amend-  
34 ments thereto.
- 35 [New Sec. 16. (a) No state agency shall, for a period of five  
36 years commencing on the date of judgment or final order, award  
37 a public works or purchase contract to a vendor, nor shall a vendor  
38 be eligible to bid for or receive a public works contract during  
39 such five-year period, when such vendor has, in the preceding five  
40 years:
- 41 [(1) Been convicted of violating a law of this state, including,  
42 but not limited to, K.S.A. 21-4409, and amendments thereto, or  
43 federal law respecting the employment of undocumented aliens;

1 or

2 [(2) been a party to a state agency proceeding in this state in  
3 which a penalty or sanction was ordered, either by hearing or final  
4 order, or through stipulation and agreement, for violation of a law  
5 of this state, including, but not limited to, K.S.A. 21-4409, and  
6 amendments thereto, or federal law respecting the employment of  
7 undocumented aliens.

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

17 [New Sec. 17. As used in sections 14 through 17, and amend-  
18 ments thereto:

19 [(a) “Undocumented alien” means any person not a citizen of  
20 the United States who has entered the United States in violation  
21 of the federal immigration and naturalization act or regulations  
22 issued thereunder, who has legally entered but without the right  
23 to be employed in the country, or who has legally entered subject  
24 to a time limit but has remained illegally after the expiration of  
25 such time limit, except that the term “undocumented alien” shall  
26 not mean any person who currently has the legal right to remain  
27 in the United States and to be employed in the United States even  
28 though such person originally entered the United States in viola-  
29 tion of the federal immigration and naturalization act or regula-  
30 tions issued thereunder and is not a citizen of the United States.

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

35 [New Sec. 18. The secretary of the department of administra-  
36 tion shall be responsible for administering the provisions of sec-  
37 tions 14 through 17, and amendments thereto.

38 [New Sec. 19. The provisions of the Kansas administrative pro-  
39 cedure act, K.S.A. 77-501 et seq., and amendments thereto, shall  
40 govern all proceedings initiated under sections 14 through 17, and  
41 amendments thereto.]

42 New Sec. ~~14~~ [19.] If any provision of sections 1 through ~~14~~  
43 [~~20~~], and amendments thereto, or the application thereof to any

1 **persons or circumstances is held invalid, such invalidity shall not**  
 2 **affect other provisions or application of the act which can be given**  
 3 **effect without the invalid provisions or application and to this end**  
 4 **the provisions of sections 1 through ~~14~~ [20], and amendments**  
 5 **thereto, are declared to be severable.**

6 ~~Section~~ **Sec. ~~1~~ 15, [20].** K.S.A. 20-156 is hereby amended to read  
 7 as follows: 20-156. The state law librarian shall be responsible for the  
 8 operation and management of the supreme court law library and shall  
 9 have custody of all books, pamphlets and documents belonging thereto.  
 10 He shall cause each book, pamphlet or document received by such library  
 11 to be stamped with the words “Kansas supreme court law library” and to  
 12 be classified and catalogued in accordance with approved library methods.  
 13 The state law librarian shall provide for the procurement of the acts,  
 14 journals and other publications of a legal nature of the congress and the  
 15 legislatures of the several states and territories, together with the judicial  
 16 decisions of the courts of the United States and of the several states and  
 17 territories. For such purpose, the state law librarian may exchange the  
 18 laws, judicial decisions and books, documents and publications of a legal  
 19 nature of the state of Kansas and agencies thereof. The law librarian may  
 20 exchange, sell or loan indefinitely, duplicate books, sets of works or other  
 21 duplicate or temporary material, and the proceeds from any such sales  
 22 shall be remitted by the state law librarian to the state treasurer in ac-  
 23 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.  
 24 Upon receipt of each such remittance, the state treasurer shall deposit  
 25 the entire amount in the state treasury to the credit of the “duplicate law  
 26 book fund,” which fund is hereby created. All expenditures from such  
 27 fund shall be for miscellaneous law library purposes and shall be made  
 28 in accordance with appropriation acts upon warrants of the director of  
 29 accounts and reports issued pursuant to vouchers approved by the state  
 30 law librarian or by a person or persons designated by him. Any exchange,  
 31 sale or loan made hereunder shall be exempt from the provisions of K.S.A.  
 32 75-3739 to ~~75-3744~~ 75-3743, and amendments thereto.

33 **Sec. ~~2~~ 16, [21].** K.S.A. 20-1a13 is hereby amended to read as fol-  
 34 lows: 20-1a13. The judicial administrator of the courts shall contract with  
 35 credit card companies to provide for collection of bank card drafts from  
 36 valid and unexpired credit cards used to pay for any docket fee, filing fee,  
 37 fax service charge, and any other fee or charge. Any discount from the  
 38 face value of a bank card draft shall not exceed 3%. All contracts entered  
 39 into under this section shall be exempt from the provisions of K.S.A. 75-  
 40 3739 to ~~75-3744~~ 75-3743, inclusive, and amendments thereto. Any fax  
 41 service charge shall include an amount to cover the cost of accepting a  
 42 bank card draft.

43 **Sec. ~~3~~ 17, [22].** K.S.A. 2009 Supp. 40-3403 is hereby amended to

1 read as follows: 40-3403. (a) For the purpose of paying damages for per-  
2 sonal injury or death arising out of the rendering of or the failure to render  
3 professional services by a health care provider, self-insurer or inactive  
4 health care provider subsequent to the time that such health care provider  
5 or self-insurer has qualified for coverage under the provisions of this act,  
6 there is hereby established the health care stabilization fund. The fund  
7 shall be held in trust in the state treasury and accounted for separately  
8 from other state funds. The board of governors shall administer the fund  
9 or contract for the administration of the fund with an insurance company  
10 authorized to do business in this state.

11 (b) (1) There is hereby created a board of governors which shall be  
12 composed of such members and shall have such powers, duties and func-  
13 tions as are prescribed by this act. The board of governors shall:

14 (A) Administer the fund and exercise and perform other powers, du-  
15 ties and functions required of the board under the health care provider  
16 insurance availability act;

17 (B) provide advice, information and testimony to the appropriate li-  
18 censing or disciplinary authority regarding the qualifications of a health  
19 care provider;

20 (C) prepare and publish, on or before October 1 of each year, a sum-  
21 mary of the fund's activity during the preceding fiscal year, including but  
22 not limited to the amount collected from surcharges, the highest and  
23 lowest surcharges assessed, the amount paid from the fund, the number  
24 of judgments paid from the fund, the number of settlements paid from  
25 the fund and the amount in the fund at the end of the fiscal year; and

26 (D) have the authority to grant exemptions from the provisions of  
27 subsection (m) of this section when a health care provider temporarily  
28 leaves the state for the purpose of obtaining additional education or train-  
29 ing or to participate in religious, humanitarian or government service  
30 programs. Whenever a health care provider has previously left the state  
31 for one of the reasons specified in this paragraph and returns to the state  
32 and recommences practice, the board of governors may refund any  
33 amount paid by the health care provider pursuant to subsection (m) of  
34 this section if no claims have been filed against such health care provider  
35 during the provider's temporary absence from the state.

36 (2) The board shall consist of 10 persons appointed by the commis-  
37 sioner of insurance, as provided by this subsection (b) and as follows:

38 (A) Three members who are licensed to practice medicine and sur-  
39 gery in Kansas who are doctors of medicine and who are on a list of  
40 nominees submitted to the commissioner by the Kansas medical society;

41 (B) three members who are representatives of Kansas hospitals and  
42 who are on a list of nominees submitted to the commissioner by the  
43 Kansas hospital association;

1 (C) two members who are licensed to practice medicine and surgery  
2 in Kansas who are doctors of osteopathic medicine and who are on a list  
3 of nominees submitted to the commissioner by the Kansas association of  
4 osteopathic medicine;

5 (D) one member who is licensed to practice chiropractic in Kansas  
6 and who is on a list of nominees submitted to the commissioner by the  
7 Kansas chiropractic association;

8 (E) one member who is a licensed professional nurse authorized to  
9 practice as a registered nurse anesthetist who is on a list of nominees  
10 submitted to the commissioner by the Kansas association of nurse  
11 anesthetists.

12 (3) When a vacancy occurs in the membership of the board of gov-  
13 ernors created by this act, the commissioner shall appoint a successor of  
14 like qualifications from a list of three nominees submitted to the com-  
15 missioner by the professional society or association prescribed by this  
16 section for the category of health care provider required for the vacant  
17 position on the board of governors. All appointments made shall be for a  
18 term of office of four years, but no member shall be appointed for more  
19 than two successive four-year terms. Each member shall serve until a  
20 successor is appointed and qualified. Whenever a vacancy occurs in the  
21 membership of the board of governors created by this act for any reason  
22 other than the expiration of a member's term of office, the commissioner  
23 shall appoint a successor of like qualifications to fill the unexpired term.  
24 In each case of a vacancy occurring in the membership of the board of  
25 governors, the commissioner shall notify the professional society or as-  
26 sociation which represents the category of health care provider required  
27 for the vacant position and request a list of three nominations of health  
28 care providers from which to make the appointment.

29 (4) The board of governors shall organize on July 1 of each year and  
30 shall elect a chairperson and vice-chairperson from among its member-  
31 ship. Meetings shall be called by the chairperson or by a written notice  
32 signed by three members of the board.

33 (5) The board of governors, in addition to other duties imposed by  
34 this act, shall study and evaluate the operation of the fund and make such  
35 recommendations to the legislature as may be appropriate to ensure the  
36 viability of the fund.

37 (6) (A) The board shall appoint an executive director who shall be in  
38 the unclassified service under the Kansas civil service act and may appoint  
39 such attorneys, legal assistants, claims managers and compliance auditors  
40 who shall also be in the unclassified service under the Kansas civil service  
41 act. Such executive director, attorneys, legal assistants, claims managers  
42 and compliance auditors shall receive compensation fixed by the board,  
43 in accordance with appropriation acts of the legislature, not subject to

1 approval of the governor.

2 (B) The board may appoint such additional employees, and provide  
3 all office space, services, equipment, materials and supplies, and all budg-  
4 eting, personnel, purchasing and related management functions required  
5 by the board in the exercise of the powers, duties and functions imposed  
6 or authorized by the health care provider insurance availability act or may  
7 enter into a contract with the commissioner of insurance for the provision,  
8 by the commissioner, of all or any part thereof.

9 (7) The commissioner shall:

10 (A) Provide technical and administrative assistance to the board of  
11 governors with respect to administration of the fund upon request of the  
12 board;

13 (B) provide such expertise as the board may reasonably request with  
14 respect to evaluation of claims or potential claims.

15 (c) Subject to subsections (d), (e), (f), (i), (k), (m), (n), (o), (p) and  
16 (q), the fund shall be liable to pay: (1) Any amount due from a judgment  
17 or settlement which is in excess of the basic coverage liability of all liable  
18 resident health care providers or resident self-insurers for any personal  
19 injury or death arising out of the rendering of or the failure to render  
20 professional services within or without this state;

21 (2) subject to the provisions of subsection (m), any amount due from  
22 a judgment or settlement which is in excess of the basic coverage liability  
23 of all liable nonresident health care providers or nonresident self-insurers  
24 for any such injury or death arising out of the rendering or the failure to  
25 render professional services within this state but in no event shall the  
26 fund be obligated for claims against nonresident health care providers or  
27 nonresident self-insurers who have not complied with this act or for  
28 claims against nonresident health care providers or nonresident self-in-  
29 surers that arose outside of this state;

30 (3) subject to the provisions of subsection (m), any amount due from  
31 a judgment or settlement against a resident inactive health care provider,  
32 an optometrist or pharmacist who purchased coverage pursuant to sub-  
33 section (n) or a physical therapist who purchased coverage pursuant to  
34 subsection (o), for any such injury or death arising out of the rendering  
35 of or failure to render professional services;

36 (4) subject to the provisions of subsection (m), any amount due from  
37 a judgment or settlement against a nonresident inactive health care pro-  
38 vider, an optometrist or pharmacist who purchased coverage pursuant to  
39 subsection (n) or a physical therapist who purchased coverage pursuant  
40 to subsection (o), for any injury or death arising out of the rendering or  
41 failure to render professional services within this state, but in no event  
42 shall the fund be obligated for claims against: (A) Nonresident inactive  
43 health care providers who have not complied with this act; or (B) non-



- 1 resident inactive health care providers for claims that arose outside of this  
2 state, unless such health care provider was a resident health care provider  
3 or resident self-insurer at the time such act occurred;
- 4 (5) subject to subsection (b) of K.S.A. 40-3411, and amendments  
5 thereto, reasonable and necessary expenses for attorney fees incurred in  
6 defending the fund against claims;
- 7 (6) any amounts expended for reinsurance obtained to protect the  
8 best interests of the fund purchased by the board of governors, which  
9 purchase shall be subject to the provisions of K.S.A. 75-3738 through ~~75-~~  
10 ~~3744~~ 75-3743, and amendments thereto, but shall not be subject to the  
11 provisions of K.S.A. 75-4101 and amendments thereto;
- 12 (7) reasonable and necessary actuarial expenses incurred in admin-  
13 istering the act, including expenses for any actuarial studies contracted  
14 for by the legislative coordinating council, which expenditures shall not  
15 be subject to the provisions of K.S.A. 75-3738 through ~~75-3744~~ 75-3743,  
16 and amendments thereto;
- 17 (8) periodically to the plan or plans, any amount due pursuant to  
18 subsection (a)(3) of K.S.A. 40-3413 and amendments thereto;
- 19 (9) reasonable and necessary expenses incurred by the board of gov-  
20 ernors in the administration of the fund or in the performance of other  
21 powers, duties or functions of the board under the health care provider  
22 insurance availability act;
- 23 (10) return of any unearned surcharge;
- 24 (11) subject to subsection (b) of K.S.A. 40-3411, and amendments  
25 thereto, reasonable and necessary expenses for attorney fees and other  
26 costs incurred in defending a person engaged or who was engaged in  
27 residency training or the private practice corporations or foundations and  
28 their full-time physician faculty employed by the university of Kansas  
29 medical center or any nonprofit corporation organized to administer the  
30 graduate medical education programs of community hospitals or medical  
31 care facilities affiliated with the university of Kansas school of medicine  
32 from claims for personal injury or death arising out of the rendering of  
33 or the failure to render professional services by such health care provider;
- 34 (12) notwithstanding the provisions of subsection (m), any amount  
35 due from a judgment or settlement for an injury or death arising out of  
36 the rendering of or failure to render professional services by a person  
37 engaged or who was engaged in residency training or the private practice  
38 corporations or foundations and their full-time physician faculty em-  
39 ployed by the university of Kansas medical center or any nonprofit cor-  
40 poration organized to administer the graduate medical education pro-  
41 grams of community hospitals or medical care facilities affiliated with the  
42 university of Kansas school of medicine;
- 43 (13) subject to the provisions of K.S.A. 65-429 and amendments

1 thereto, reasonable and necessary expenses for the development and pro-  
2 motion of risk management education programs and for the medical care  
3 facility licensure and risk management survey functions carried out under  
4 K.S.A. 65-429 and amendments thereto;

5 (14) notwithstanding the provisions of subsection (m), any amount,  
6 but not less than the required basic coverage limits, owed pursuant to a  
7 judgment or settlement for any injury or death arising out of the rendering  
8 of or failure to render professional services by a person, other than a  
9 person described in clause (12) of this subsection (c), who was engaged  
10 in a postgraduate program of residency training approved by the state  
11 board of healing arts but who, at the time the claim was made, was no  
12 longer engaged in such residency program;

13 (15) subject to subsection (b) of K.S.A. 40-3411, and amendments  
14 thereto, reasonable and necessary expenses for attorney fees and other  
15 costs incurred in defending a person described in clause (14) of this sub-  
16 section (c);

17 (16) expenses incurred by the commissioner in the performance of  
18 duties and functions imposed upon the commissioner by the health care  
19 provider insurance availability act, and expenses incurred by the com-  
20 missioner in the performance of duties and functions under contracts  
21 entered into between the board and the commissioner as authorized by  
22 this section; and

23 (17) periodically to the state general fund reimbursements of  
24 amounts paid to members of the health care stabilization fund oversight  
25 committee for compensation, travel expenses and subsistence expenses  
26 pursuant to subsection (e) of K.S.A. 40-3403b, and amendments thereto.

27 (d) All amounts for which the fund is liable pursuant to subsection  
28 (c) shall be paid promptly and in full except that, if the amount for which  
29 the fund is liable is \$300,000 or more, it shall be paid, by installment  
30 payments of \$300,000 or 10% of the amount of the judgment including  
31 interest thereon, whichever is greater, per fiscal year, the first installment  
32 to be paid within 60 days after the fund becomes liable and each subse-  
33 quent installment to be paid annually on the same date of the year the  
34 first installment was paid, until the claim has been paid in full. Any at-  
35 torney fees payable from such installment shall be similarly prorated.

36 (e) In no event shall the fund be liable to pay in excess of \$3,000,000  
37 pursuant to any one judgment or settlement against any one health care  
38 provider relating to any injury or death arising out of the rendering of or  
39 the failure to render professional services on and after July 1, 1984, and  
40 before July 1, 1989, subject to an aggregate limitation for all judgments  
41 or settlements arising from all claims made in any one fiscal year in the  
42 amount of \$6,000,000 for each health care provider.

43 (f) The fund shall not be liable to pay in excess of the amounts spec-

1 ified in the option selected by the health care provider pursuant to sub-  
2 section (l) for judgments or settlements relating to injury or death arising  
3 out of the rendering of or failure to render professional services by such  
4 health care provider on or after July 1, 1989.

5 (g) A health care provider shall be deemed to have qualified for cov-  
6 erage under the fund:

7 (1) On and after July 1, 1976, if basic coverage is then in effect;

8 (2) subsequent to July 1, 1976, at such time as basic coverage be-  
9 comes effective; or

10 (3) upon qualifying as a self-insurer pursuant to K.S.A. 40-3414 and  
11 amendments thereto.

12 (h) A health care provider who is qualified for coverage under the  
13 fund shall have no vicarious liability or responsibility for any injury or  
14 death arising out of the rendering of or the failure to render professional  
15 services inside or outside this state by any other health care provider who  
16 is also qualified for coverage under the fund. The provisions of this sub-  
17 section shall apply to all claims filed on or after July 1, 1986.

18 (i) Notwithstanding the provisions of K.S.A. 40-3402 and amend-  
19 ments thereto, if the board of governors determines due to the number  
20 of claims filed against a health care provider or the outcome of those  
21 claims that an individual health care provider presents a material risk of  
22 significant future liability to the fund, the board of governors is authorized  
23 by a vote of a majority of the members thereof, after notice and an op-  
24 portunity for hearing in accordance with the provisions of the Kansas  
25 administrative procedure act, to terminate the liability of the fund for all  
26 claims against the health care provider for damages for death or personal  
27 injury arising out of the rendering of or the failure to render professional  
28 services after the date of termination. The date of termination shall be  
29 30 days after the date of the determination by the board of governors.  
30 The board of governors, upon termination of the liability of the fund  
31 under this subsection, shall notify the licensing or other disciplinary board  
32 having jurisdiction over the health care provider involved of the name of  
33 the health care provider and the reasons for the termination.

34 (j) (1) Upon the payment of moneys from the health care stabiliza-  
35 tion fund pursuant to subsection (c)(11), the board of governors shall  
36 certify to the director of accounts and reports the amount of such pay-  
37 ment, and the director of accounts and reports shall transfer an amount  
38 equal to the amount certified, reduced by any amount transferred pur-  
39 suant to paragraph (3) or (4) of this subsection (j), from the state general  
40 fund to the health care stabilization fund.

41 (2) Upon the payment of moneys from the health care stabilization  
42 fund pursuant to subsection (c)(12), the board of governors shall certify  
43 to the director of accounts and reports the amount of such payment which

1 is equal to the basic coverage liability of self-insurers, and the director of  
2 accounts and reports shall transfer an amount equal to the amount certi-  
3 fied, reduced by any amount transferred pursuant to paragraph (3) or  
4 (4) of this subsection (j), from the state general fund to the health care  
5 stabilization fund.

6 (3) The university of Kansas medical center private practice foun-  
7 dation reserve fund is hereby established in the state treasury. If the  
8 balance in such reserve fund is less than \$500,000 on July 1 of any year,  
9 the private practice corporations or foundations referred to in subsection  
10 (c) of K.S.A. 40-3402, and amendments thereto, shall remit the amount  
11 necessary to increase such balance to \$500,000 to the state treasurer for  
12 credit to such reserve fund as soon after such July 1 date as is practicable.  
13 Upon receipt of each such remittance, the state treasurer shall credit the  
14 same to such reserve fund. When compliance with the foregoing provi-  
15 sions of this paragraph have been achieved on or after July 1 of any year  
16 in which the same are applicable, the state treasurer shall certify to the  
17 board of governors that such reserve fund has been funded for the year  
18 in the manner required by law. Moneys in such reserve fund may be  
19 invested or reinvested in accordance with the provisions of K.S.A. 40-  
20 3406, and amendments thereto, and any income or interest earned by  
21 such investments shall be credited to such reserve fund. Upon payment  
22 of moneys from the health care stabilization fund pursuant to subsection  
23 (c)(11) or (c)(12) with respect to any private practice corporation or foun-  
24 dation or any of its full-time physician faculty employed by the university  
25 of Kansas, the director of accounts and reports shall transfer an amount  
26 equal to the amount paid from the university of Kansas medical center  
27 private practice foundation reserve fund to the health care stabilization  
28 fund or, if the balance in such reserve fund is less than the amount so  
29 paid, an amount equal to the balance in such reserve fund.

30 (4) The graduate medical education administration reserve fund is  
31 hereby established in the state treasury. If the balance in such reserve  
32 fund is less than \$40,000 on July 1 of any year, the nonprofit corporations  
33 organized to administer the graduate medical education programs of com-  
34 munity hospitals or medical care facilities affiliated with the university of  
35 Kansas school of medicine shall remit the amount necessary to increase  
36 such balance to \$40,000 to the state treasurer for credit to such reserve  
37 fund as soon after such July 1 date as is practicable. Upon receipt of each  
38 such remittance, the state treasurer shall credit the same to such reserve  
39 fund. When compliance with the foregoing provisions of this paragraph  
40 have been achieved on or after July 1 of any year in which the same are  
41 applicable, the state treasurer shall certify to the board of governors that  
42 such reserve fund has been funded for the year in the manner required  
43 by law. Moneys in such reserve fund may be invested or reinvested in

1 accordance with the provisions of K.S.A. 40-3406, and amendments  
2 thereto, and any income or interest earned by such investments shall be  
3 credited to such reserve fund. Upon payment of moneys from the health  
4 care stabilization fund pursuant to subsection (c)(11) or (c)(12) with re-  
5 spect to any nonprofit corporations organized to administer the graduate  
6 medical education programs of community hospitals or medical care fa-  
7 cilities affiliated with the university of Kansas school of medicine the  
8 director of accounts and reports shall transfer an amount equal to the  
9 amount paid from the graduate medical education administration reserve  
10 fund to the health care stabilization fund or, if the balance in such reserve  
11 fund is less than the amount so paid, an amount equal to the balance in  
12 such reserve fund.

13 (5) Upon payment of moneys from the health care stabilization fund  
14 pursuant to subsection (c)(14) or (c)(15), the board of governors shall  
15 certify to the director of accounts and reports the amount of such pay-  
16 ment, and the director of accounts and reports shall transfer an amount  
17 equal to the amount certified from the state general fund to the health  
18 care stabilization fund.

19 (k) Notwithstanding any other provision of the health care provider  
20 insurance availability act, no psychiatric hospital licensed under K.S.A.  
21 75-3307b and amendments thereto shall be assessed a premium sur-  
22 charge or be entitled to coverage under the fund if such hospital has not  
23 paid any premium surcharge pursuant to K.S.A. 40-3404 and amend-  
24 ments thereto prior to January 1, 1988.

25 (l) On or after July 1, 1989, every health care provider shall make an  
26 election to be covered by one of the following options provided in this  
27 subsection (l) which shall limit the liability of the fund with respect to  
28 judgments or settlements relating to injury or death arising out of the  
29 rendering of or failure to render professional services on or after July 1,  
30 1989. Such election shall be made at the time the health care provider  
31 renews the basic coverage in effect on July 1, 1989, or, if basic coverage  
32 is not in effect, such election shall be made at the time such coverage is  
33 acquired pursuant to K.S.A. 40-3402, and amendments thereto. Notice  
34 of the election shall be provided by the insurer providing the basic cov-  
35 erage in the manner and form prescribed by the board of governors and  
36 shall continue to be effective from year to year unless modified by a  
37 subsequent election made prior to the anniversary date of the policy. The  
38 health care provider may at any subsequent election reduce the dollar  
39 amount of the coverage for the next and subsequent fiscal years, but may  
40 not increase the same, unless specifically authorized by the board of gov-  
41 ernors. Any election of fund coverage limits, whenever made, shall be  
42 with respect to judgments or settlements relating to injury or death arising  
43 out of the rendering of or failure to render professional services on or

1 after the effective date of such election of fund coverage limits. Such  
2 election shall be made for persons engaged in residency training and  
3 persons engaged in other postgraduate training programs approved by  
4 the state board of healing arts at medical care facilities or mental health  
5 centers in this state by the agency or institution paying the surcharge  
6 levied under K.S.A. 40-3404, and amendments thereto, for such persons.  
7 The election of fund coverage limits for a nonprofit corporation organized  
8 to administer the graduate medical education programs of community  
9 hospitals or medical care facilities affiliated with the university of Kansas  
10 school of medicine shall be deemed to be effective at the highest option.  
11 Such options shall be as follows:

12 (1) *OPTION 1.* The fund shall not be liable to pay in excess of  
13 \$100,000 pursuant to any one judgment or settlement for any party  
14 against such health care provider, subject to an aggregate limitation for  
15 all judgments or settlements arising from all claims made in the fiscal year  
16 in an amount of \$300,000 for such provider.

17 (2) *OPTION 2.* The fund shall not be liable to pay in excess of  
18 \$300,000 pursuant to any one judgment or settlement for any party  
19 against such health care provider, subject to an aggregate limitation for  
20 all judgments or settlements arising from all claims made in the fiscal year  
21 in an amount of \$900,000 for such provider.

22 (3) *OPTION 3.* The fund shall not be liable to pay in excess of  
23 \$800,000 pursuant to any one judgment or settlement for any party  
24 against such health care provider, subject to an aggregate limitation for  
25 all judgments or settlements arising from all claims made in the fiscal year  
26 in an amount of \$2,400,000 for such health care provider.

27 (m) The fund shall not be liable for any amounts due from a judgment  
28 or settlement against resident or nonresident inactive health care provid-  
29 ers who first qualify as an inactive health care provider on or after July 1,  
30 1989, unless such health care provider has been in compliance with K.S.A.  
31 40-3402, and amendments thereto, for a period of not less than five years.  
32 If a health care provider has not been in compliance for five years, such  
33 health care provider may make application and payment for the coverage  
34 for the period while they are nonresident health care providers, nonres-  
35 ident self-insurers or resident or nonresident inactive health care provid-  
36 ers to the fund. Such payment shall be made within 30 days after the  
37 health care provider ceases being an active health care provider and shall  
38 be made in an amount determined by the board of governors to be suf-  
39 ficient to fund anticipated claims based upon reasonably prudent actuarial  
40 principles. The provisions of this subsection shall not be applicable to any  
41 health care provider which becomes inactive through death or retirement,  
42 or through disability or circumstances beyond such health care provider's  
43 control, if such health care provider notifies the board of governors and

1 receives approval for an exemption from the provisions of this subsection.  
2 Any period spent in a postgraduate program of residency training ap-  
3 proved by the state board of healing arts shall not be included in com-  
4 putation of time spent in compliance with the provisions of K.S.A. 40-  
5 3402, and amendments thereto.

6 (n) Notwithstanding the provisions of subsection (m) or any other  
7 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to  
8 the contrary, the fund shall not be liable for any claim made on or after  
9 July 1, 1991, against a licensed optometrist or pharmacist relating to any  
10 injury or death arising out of the rendering of or failure to render pro-  
11 fessional services by such optometrist or pharmacist prior to July 1, 1991,  
12 unless such optometrist or pharmacist qualified as an inactive health care  
13 provider prior to July 1, 1991.

14 (o) Notwithstanding the provisions of subsection (m) or any other  
15 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to  
16 the contrary, the fund shall not be liable for any claim made on or after  
17 July 1, 1995, against a physical therapist registered by the state board of  
18 healing arts relating to any injury or death arising out of the rendering of  
19 or failure to render professional services by such physical therapist prior  
20 to July 1, 1995, unless such physical therapist qualified as an inactive  
21 health care provider prior to July 1, 1995.

22 (p) Notwithstanding the provisions of subsection (m) or any other  
23 provision in article 34 of chapter 40 of the Kansas Statutes Annotated to  
24 the contrary, the fund shall not be liable for any claim made on or after  
25 July 1, 1997, against a health maintenance organization relating to any  
26 injury or death arising out of the rendering of or failure to render pro-  
27 fessional services by such health maintenance organization prior to July  
28 1, 1997, unless such health maintenance organization qualified as an in-  
29 active health care provider prior to July 1, 1997, and obtained coverage  
30 pursuant to subsection (m). Health maintenance organizations not qual-  
31 ified as inactive health care providers prior to July 1, 1997, may purchase  
32 coverage from the fund for periods of prior compliance by making ap-  
33 plication prior to August 1, 1997, and payment within 30 days from notice  
34 of the calculated amount as determined by the board of governors to be  
35 sufficient to fund anticipated claims based on reasonably prudent actu-  
36 arial principles.

37 (q) Notwithstanding anything in article 34 of chapter 40 of the Kansas  
38 Statutes Annotated to the contrary, the fund shall in no event be liable  
39 for any claims against any health care provider based upon or relating to  
40 the health care provider's sexual acts or activity, but in such cases the  
41 fund may pay reasonable and necessary expenses for attorney fees in-  
42 curred in defending the fund against such claim. The fund may recover  
43 all or a portion of such expenses for attorney fees if an adverse judgment

1 is returned against the health care provider for damages resulting from  
2 the health care provider's sexual acts or activity.

3 Sec. ~~4~~ ~~18~~ **[23.]** K.S.A. 74-8704 is hereby amended to read as fol-  
4 lows: 74-8704. (a) The executive director shall have the power to:

5 (1) Supervise and administer the operation of the state lottery in ac-  
6 cordance with the provisions of this act and such rules and regulations as  
7 adopted hereunder.

8 (2) Appoint, subject to the Kansas civil service act and within the  
9 limitations of appropriations therefor, all other employees of the Kansas  
10 lottery, which employees shall be in the classified service unless otherwise  
11 specifically provided by this act.

12 (3) Enter into contracts for advertising and promotional services, sub-  
13 ject to the provisions of subsection (b); annuities or other methods  
14 deemed appropriate for the payment of prizes; data processing and other  
15 technical products, equipment and services; and facilities as needed to  
16 operate the Kansas lottery, including but not limited to gaming equip-  
17 ment, tickets and other services involved in major procurement contracts,  
18 in accordance with K.S.A. 74-8705 and amendments thereto.

19 (4) Enter into contracts with persons for the sale of lottery tickets or  
20 shares to the public, as provided by this act and rules and regulations  
21 adopted pursuant to this act, which contracts shall not be subject to the  
22 provisions of K.S.A. 75-3738 through ~~75-3744~~ 75-3743, and amendments  
23 thereto.

24 (5) Require lottery retailers to furnish proof of financial stability or  
25 furnish surety in an amount based upon the expected volume of sales of  
26 lottery tickets or shares.

27 (6) Examine, or cause to be examined by any agent or representative  
28 designated by the executive director, any books, papers, records or mem-  
29 oranda of any lottery retailer for the purpose of ascertaining compliance  
30 with the provisions of this act or rules and regulations adopted hereunder.

31 (7) Issue subpoenas to compel access to or for the production of any  
32 books, papers, records or memoranda in the custody or control of any  
33 lottery retailer, or to compel the appearance of any lottery retailer or  
34 employee of any lottery retailer, for the purpose of ascertaining compli-  
35 ance with the provisions of this act or rules and regulations adopted here-  
36 under. Subpoenas issued under the provisions of this subsection may be  
37 served upon natural persons and corporations in the manner provided in  
38 K.S.A. 60-304 and amendments thereto for the service of process by any  
39 officer authorized to serve subpoenas in civil actions or by the executive  
40 director or an agent or representative designated by the executive direc-  
41 tor. In the case of the refusal of any person to comply with any such  
42 subpoena, the executive director may make application to the district  
43 court of any county where such books, papers, records, memoranda or



1 person is located for an order to comply.

2 (8) Administer oaths and take depositions to the same extent and  
3 subject to the same limitations as would apply if the deposition were in  
4 aid of a civil action in the district court.

5 (9) Require fingerprinting of employees and such other persons who  
6 work in sensitive areas within the lottery as deemed appropriate by the  
7 director. The director may submit such fingerprints to the Kansas bureau  
8 of investigation and to the federal bureau of investigation for the purposes  
9 of verifying the identity of such employees and persons and obtaining  
10 records of their criminal arrests and convictions.

11 (b) The Kansas lottery shall not engage in on-site display advertising  
12 or promotion of the lottery at any amateur athletic or sporting event  
13 including, but not limited to, amateur athletic sporting events at institu-  
14 tions under the jurisdiction and control of the state board of regents.

15 Sec. ~~5-19~~, [24.] K.S.A. 2009 Supp. 74-8705 is hereby amended to  
16 read as follows: 74-8705. (a) Major procurement contracts shall be  
17 awarded in accordance with K.S.A. 75-3738 through ~~75-3744~~ 75-3743,  
18 and amendments thereto, or subsection (b), as determined by the direc-  
19 tor, except that:

20 (1) The contract or contracts for the initial lease of facilities for the  
21 Kansas lottery shall be awarded upon the evaluation and approval of the  
22 director, the secretary of administration and the director of architectural  
23 services;

24 (2) The commission shall designate certain major procurement con-  
25 tracts or portions thereof to be awarded, in accordance with rules and  
26 regulations of the commission, solely to minority business enterprises.

27 (b) The director may award any major procurement contract by use  
28 of a procurement negotiating committee. Such committee shall be com-  
29 posed of: (1) The executive director or a Kansas lottery employee desig-  
30 nated by the executive director; (2) the chairperson of the commission or  
31 a commission member designated by the chairperson; and (3) the director  
32 of the division of purchases or an employee of such division designated  
33 by the director. Prior to negotiating a major procurement contract, the  
34 committee shall solicit bids or proposals thereon. The division of pur-  
35 chases shall provide staff support for the committee's solicitations. Upon  
36 receipt of bids or proposals, the committee may negotiate with one or  
37 more of the persons submitting such bids or proposals and select from  
38 among such persons the person to whom the contract is awarded. Such  
39 procurements shall be open and competitive and shall consider relevant  
40 factors, including security, competence, experience, timely performance  
41 and maximization of net revenues to the state. If a procurement negoti-  
42 ating committee is utilized, the provisions of K.S.A. 75-3738 through ~~75-~~  
43 ~~3744~~ 75-3743, and amendments thereto, shall not apply. Meetings con-

1 ducted by the procurement negotiating committee shall be exempt from  
2 the provisions of the Kansas open meeting act, K.S.A. 75-4317 through  
3 75-4320c, and amendments thereto.

4 (c) Before a major procurement contract is awarded, the executive  
5 director shall conduct a background investigation of: (1) The vendor to  
6 whom the contract is to be awarded; (2) all officers and directors of such  
7 vendor; (3) all persons who own a 5% or more interest in such vendor;  
8 (4) all persons who own a controlling interest in such vendor; and (5) any  
9 subsidiary or other business in which such vendor owns a controlling  
10 interest. The vendor shall submit appropriate investigation authorizations  
11 to facilitate such investigation. The executive director may require, in  
12 accordance with rules and regulations of the commission, that a vendor  
13 submit any additional information considered appropriate to preserve the  
14 integrity and security of the lottery. In addition, the executive director  
15 may conduct a background investigation of any person having a beneficial  
16 interest in a vendor. The secretary of revenue, securities commissioner,  
17 attorney general and director of the Kansas bureau of investigation shall  
18 assist in any investigation pursuant to this subsection upon request of the  
19 executive director. Whenever the secretary of revenue, securities com-  
20 missioner, attorney general or director of the Kansas bureau of investi-  
21 gation assists in such an investigation and incurs costs in addition to those  
22 attributable to the operations of the office or bureau, such additional costs  
23 shall be paid by the Kansas lottery. The furnishing of assistance in such  
24 an investigation shall be a transaction between the Kansas lottery and the  
25 respective officer and shall be settled in accordance with K.S.A. 75-5516,  
26 and amendments thereto.

27 Upon the request of the chairperson, the Kansas bureau of investiga-  
28 tion and other criminal justice agencies shall provide to the chairperson  
29 all background investigation information including criminal history record  
30 information, arrest and nonconviction data, criminal intelligence infor-  
31 mation and information relating to criminal and background investiga-  
32 tions of a vendor to whom a major procurement contract is to be awarded.  
33 Such information, other than conviction data, shall be confidential and  
34 shall not be disclosed, except as provided in this section. In addition to  
35 any other penalty provided by law, disclosure of such information shall  
36 be grounds for removal from office or termination of employment.

37 (d) All major procurement contracts shall be subject to approval of  
38 the commission.

39 (e) The executive director shall not agree to any renewal or extension  
40 of a major procurement contract unless such extension or renewal is  
41 awarded in the manner provided by this section.

42 Sec. ~~6-20~~. [25.] K.S.A. 74-8709 is hereby amended to read as fol-  
43 lows: 74-8709. (a) There is hereby created the Kansas lottery commission,

1 which shall be composed of five members who shall be appointed by the  
2 governor, subject to confirmation by the senate as provided by K.S.A. 75-  
3 4315b and amendments thereto. Except as provided by K.S.A. 46-2601,  
4 and amendments thereto, no person appointed to the commission shall  
5 exercise any power, duty or function as a member of the commission until  
6 confirmed by the senate. All members of the commission shall be citizens  
7 of the United States and residents of this state. Not more than three of  
8 the five members shall be members of the same political party. A chair-  
9 person of the commission shall be designated by the governor from the  
10 membership of the commission.

11 (b) Except as provided by subsection (c), the members of the com-  
12 mission shall serve for terms of four years and until their successors are  
13 appointed and confirmed, except that the members first appointed shall  
14 serve for terms designated by the governor as follows: One member shall  
15 serve for a term of one year, one shall serve for a term of two years, one  
16 shall serve for a term of three years and two shall serve for terms of four  
17 years. Any vacancy occurring in the membership of the commission shall  
18 be filled in the same manner as the original appointment for the remain-  
19 der of the unexpired term.

20 (c) The terms of members who are serving on the commission on the  
21 effective date of this act shall expire on March 15, of the year in which  
22 such member's term would have expired under the provisions of this  
23 section prior to amendment by this act. Thereafter, members shall be  
24 appointed for terms of four years and until their successors are appointed  
25 and confirmed.

26 (d) The commission shall hold at least four regular meetings each  
27 year and such additional meetings as the chairperson deems desirable.  
28 Special meetings shall be called by the chairperson upon written request  
29 of the executive director or any three members of the commission. All  
30 meetings shall be held at a place and time fixed by the chairperson. A  
31 majority of the members of the commission shall constitute a quorum to  
32 transact its business.

33 (e) The commission shall consult with and advise the executive di-  
34 rector relating to the operation of the state lottery, shall assist the director  
35 in the establishment of policies and shall review and approve the proposed  
36 annual budget for the Kansas lottery prepared by the executive director,  
37 subject to all state laws governing budget procedures for state agencies.

38 (f) The commission, in conjunction with the executive director, shall  
39 make an ongoing study of the operation and administration of lotteries in  
40 operation in other states or countries, of available literature on the sub-  
41 ject, of federal laws and regulations which may affect the operation of the  
42 lottery and of the reaction of citizens of this state to existing or proposed  
43 features of lottery games, with a view toward implementing improve-

1 ments that will tend to serve the purposes of this act.

2 (g) Major procurements recommended by the executive director  
3 shall be subject to the approval of the commission.

4 (h) The commission may enter into written agreements with one or  
5 more other states or corporations made up of representatives of one or  
6 more other states' lotteries and participate in the operation, marketing  
7 and promotion of a joint lottery or joint lottery games, conforming to the  
8 provisions of this act, which agreements shall not be subject to the pro-  
9 visions of K.S.A. 75-3738 through ~~75-3744~~ 75-3743, and amendments  
10 thereto.

11 (i) Subject to the limitations of appropriations therefor, members of  
12 the commission shall receive such compensation as determined by the  
13 governor. Members of the commission attending meetings of the com-  
14 mission or subcommittee meetings thereof approved by the commission  
15 shall be paid subsistence allowances, mileage and other expenses as pro-  
16 vided in K.S.A. 75-3223, and amendments thereto. In addition, the chair-  
17 person of the commission, or the member of the commission designated  
18 by the chairperson to serve on a procurement negotiating committee,  
19 shall be paid amounts equal to amounts provided by K.S.A. 75-3223, and  
20 amendments thereto, for subsistence allowances, mileage and other ex-  
21 penses for attendance at meetings of a procurement negotiating com-  
22 mittee pursuant to K.S.A. 74-8705, and amendments thereto.

23 Sec. ~~7, 21~~, [26.] K.S.A. 2009 Supp. 74-99b16 is hereby amended to  
24 read as follows: 74-99b16. (a) As used in this section, unless the context  
25 expressly provides otherwise:

26 (1) "Ancillary technical services" include, but shall not be limited to,  
27 geology services and other soil or subsurface investigation and testing  
28 services, surveying, adjusting and balancing of air conditioning, ventilat-  
29 ing, heating and other mechanical building systems, testing and consultant  
30 services that are determined by the bioscience authority to be required  
31 for a project;

32 (2) "architectural services" means those services described by sub-  
33 section (e) of K.S.A. 74-7003, and amendments thereto;

34 (3) "construction services" means the work performed by a construc-  
35 tion contractor to commence and complete a project;

36 (4) "construction management at-risk services" means the services  
37 provided by a firm which has entered into a contract with the bioscience  
38 authority to be the construction manager at risk for the value and schedule  
39 of the contract for a project, which is to hold the trade contracts and  
40 execute the work for a project in a manner similar to a general contractor  
41 and which is required to solicit competitive bids for the trade packages  
42 developed for a project and to enter into the trade contracts for a project  
43 with the lowest responsible bidder therefor, and may include, but are not

- 1 limited to, such services as scheduling, value analysis, systems analysis,  
2 constructability reviews, progress document reviews, subcontractor in-  
3 volvement and prequalification, subcontractor bonding policy, budgeting  
4 and price guarantees, and construction coordination;
- 5 (5) “division of facilities management” means the division of facilities  
6 management of the department of administration;
- 7 (6) “engineering services” means those services described by subsec-  
8 tion (i) of K.S.A. 74-7003, and amendments thereto;
- 9 (7) “firm” means (A) with respect to architectural services, an indi-  
10 vidual, firm, partnership, corporation, association or other legal entity  
11 which is: (i) permitted by law to practice the profession of architecture;  
12 and (ii) maintaining an office in Kansas staffed by one or more architects  
13 who are licensed by the board of technical professions; or (iii) not main-  
14 taining an office in Kansas, but which is qualified to perform special archi-  
15 tectural services that are required in special cases where in the judg-  
16 ment of the bioscience authority it is necessary to go outside the state to  
17 obtain such services; (B) with respect to engineering services or land  
18 surveying, an individual, firm, partnership, corporation, association or  
19 other legal entity permitted by law to practice the profession of engi-  
20 neering and provide engineering services or practice the profession of  
21 land surveying and provide land surveying services, respectively; (C) with  
22 respect to construction management at-risk services, a qualified individ-  
23 ual, firm, partnership, corporation, association or other legal entity per-  
24 mitted by law to perform construction management at-risk services; (D)  
25 with respect to ancillary technical services or other services that are de-  
26 termined by the bioscience authority to be required for a project, a qual-  
27 ified individual, firm, partnership, corporation, association or other legal  
28 entity permitted by law to practice the required profession or perform  
29 the other required services, as determined by the bioscience authority;  
30 and (E) with respect to construction services, a qualified individual, firm,  
31 partnership, corporation, association, or other legal entity permitted by  
32 law to perform construction services for a project;
- 33 (8) “land surveying” means those services described in subsection (j)  
34 of K.S.A. 74-7003, and amendments thereto;
- 35 (9) “negotiating committee” means the board of directors of the sub-  
36 sidiary corporation formed under K.S.A. 2009 Supp. 76-781, and amend-  
37 ments thereto, except that for the period of May 1, 2008, through May  
38 1, 2009, the term shall have the meaning set forth in subsection (b) of  
39 K.S.A. 75-1251, and amendments thereto;
- 40 (10) “project” means a project undertaken by the Kansas bioscience  
41 authority;
- 42 (11) “project services” means architectural services, engineering  
43 services, land surveying, construction management at-risk services, con-

1 construction services, ancillary technical services or other construction-re-  
2 lated services determined by the bioscience authority to be required for  
3 a project; and

4 (12) “state building advisory commission” means the state building  
5 advisory commission created by K.S.A. 75-3780, and amendments  
6 thereto.

7 (b) The bioscience authority, when acting under authority of this act,  
8 and each project authorized by the bioscience authority under this act are  
9 exempt from the provisions of K.S.A. 75-1269, 75-3738 through 75-  
10 3741b, 75-3742 through ~~75-3744~~ 75-3743, and 75-3783, and amendments  
11 thereto, except as otherwise specifically provided by this act.

12 (c) Notwithstanding the provisions of K.S.A. 75-3738 through ~~75-~~  
13 ~~3744~~ 75-3743, and amendments thereto, or the provisions of any other  
14 statute to the contrary, all contracts for any supplies, materials or equip-  
15 ment for a project authorized by the bioscience authority under this act,  
16 shall be entered into in accordance with procurement procedures deter-  
17 mined by the bioscience authority, subject to the provisions of this sec-  
18 tion, except that, in the discretion of the bioscience authority, any such  
19 contract may be entered into in the manner provided in and subject to  
20 the provisions of any such statute otherwise applicable thereto. Notwith-  
21 standing the provisions of K.S.A. 75-3738 through ~~75-3744~~ 75-3743, and  
22 amendments thereto, if the bioscience authority does not obtain construc-  
23 tion management at-risk services for a project, the construction services  
24 for such project shall be obtained pursuant to competitive bids and all  
25 contracts for construction services for such project shall be awarded to  
26 the lowest responsible bidder in accordance with procurement proce-  
27 dures determined and administered by the bioscience authority which  
28 shall be consistent with the provisions of K.S.A. 75-3738 through ~~75-3744~~  
29 75-3743, and amendments thereto.

30 (d) When it is necessary in the judgment of the bioscience authority  
31 to obtain project services for a particular project by conducting negotia-  
32 tions therefor, the bioscience authority shall publish a notice of the com-  
33 mencement of negotiations for the required project services at least 15  
34 days prior to the commencement of such negotiations in the Kansas reg-  
35 ister in accordance with K.S.A. 75-430a, and amendments thereto, and  
36 in such other appropriate manner as may be determined by the bioscience  
37 authority.

38 (e) (1) Notwithstanding the provisions of subsection (b) of K.S.A. 75-  
39 1251, and amendments thereto, or the provisions of any other statute to  
40 the contrary, as used in K.S.A. 75-1250 through 75-1270, and amend-  
41 ments thereto, with respect to the procurement of architectural services  
42 for a project authorized by the bioscience authority under this act, “ne-  
43 gotiating committee” shall mean the board of directors of the subsidiary

1 corporation formed under K.S.A. 2009 Supp. 76-781, and amendments  
2 thereto, and such board of directors shall negotiate a contract with a firm  
3 to provide any required architectural services for the project in accord-  
4 ance with the provisions of K.S.A. 75-1250 through 75-1270, and amend-  
5 ments thereto, except that no limitation on the fees for architectural serv-  
6 ices for the project shall apply to the fees negotiated by the board of  
7 directors for such architectural services, except that for the period of May  
8 1, 2008, through May 1, 2009, the “negotiating committee” shall have the  
9 meaning set forth in subsection (b) of K.S.A. 75-1251, and amendments  
10 thereto, and the board of directors of the subsidiary corporation formed  
11 under K.S.A. 2009 Supp. 76-781, and amendments thereto, shall have no  
12 role in the procurement of architectural services for a project.

13 (2) Notwithstanding the provisions of subsection (e) of K.S.A. 75-  
14 5802, and amendments thereto, or the provisions of any other statute to  
15 the contrary, as used in K.S.A. 75-5801 through 75-5807, and amend-  
16 ments thereto, with respect to the procurement of engineering services  
17 or land surveying services for a project authorized by the bioscience au-  
18 thority under this act, “negotiating committee” shall mean the board of  
19 directors of the subsidiary corporation formed under K.S.A. 2009 Supp.  
20 76-781, and amendments thereto, and such board of directors shall ne-  
21 gotiate a contract with a firm to provide any required engineering services  
22 or land surveying services for the project in accordance with the provi-  
23 sions of K.S.A. 75-5801 through 75-5807, and amendments thereto, ex-  
24 cept that for the period of May 1, 2008, through May 1, 2009, the “ne-  
25 gotiating committee” shall have the meaning set forth in subsection (b)  
26 of K.S.A. 75-1251, and amendments thereto, and the board of directors  
27 of the subsidiary corporation formed under K.S.A. 2009 Supp. 76-781,  
28 and amendments thereto, shall have no role in the procurement of en-  
29 gineering services or land surveying services for a project.

30 (3) In any case of a conflict between the provisions of this section and  
31 the provisions of K.S.A. 75-1250 through 75-1270, or 75-5801 through  
32 75-5807, and amendments thereto, with respect to a project authorized  
33 by the bioscience authority under this act, the provisions of this section  
34 shall govern.

35 (f) (1) For the procurement of construction management at-risk  
36 services for projects under this act, the secretary of administration shall  
37 encourage firms engaged in the performance of construction manage-  
38 ment at-risk services to submit annually to the secretary of administration  
39 and to the state building advisory commission a statement of qualifications  
40 and performance data. Each statement shall include data relating to (A)  
41 the firm’s capacity and experience, including experience on similar or  
42 related projects, (B) the capabilities and other qualifications of the firm’s  
43 personnel, and (C) performance data of all consultants the firm proposes

1 to use.

2 (2) Whenever the bioscience authority determines that a construction  
3 manager at risk is required for a project under this act, the bioscience  
4 authority shall notify the state building advisory commission and the state  
5 building advisory commission shall prepare a list of at least three and not  
6 more than five firms which are, in the opinion of the state building ad-  
7 visory commission, qualified to serve as construction manager at risk for  
8 the project. Such list shall be submitted to the negotiating committee,  
9 without any recommendation of preference or other recommendation.  
10 The negotiating committee shall have access to statements of qualifica-  
11 tions of and performance data on the firms listed by the state building  
12 advisory commission and all information and evaluations regarding such  
13 firms gathered and developed by the secretary of administration under  
14 K.S.A. 75-3783, and amendments thereto.

15 (3) The negotiating committee shall conduct discussions with each of  
16 the firms so listed regarding the project. The negotiating committee shall  
17 determine which construction management at-risk services are desired  
18 and then shall proceed to negotiate with and attempt to enter into a  
19 contract with the firm considered to be most qualified to serve as con-  
20 struction manager at risk for the project. The negotiating committee shall  
21 proceed in accordance with the same process with which negotiations are  
22 undertaken to contract with a firm to be a project architect under K.S.A.  
23 75-1257, and amendments thereto, to the extent that such provisions can  
24 be made to apply. Should the negotiating committee be unable to ne-  
25 gotiate a satisfactory contract with the firm considered to be most qual-  
26 ified, negotiations with that firm shall be terminated and shall undertake  
27 negotiations with the second most qualified firm, and so forth, in accord-  
28 ance with that statute.

29 (4) The contract to perform construction management at-risk services  
30 for a project shall be prepared by the division of facilities management  
31 and entered into by the bioscience authority with the firm contracting to  
32 perform such construction management at-risk services.

33 (g) (1) To assist in the procurement of construction services for pro-  
34 jects under this act, the secretary of administration shall encourage firms  
35 engaged in the performance of construction services to submit annually  
36 to the secretary of administration and to the state building advisory com-  
37 mission a statement of qualifications and performance data. Each state-  
38 ment shall include data relating to (A) the firm's capacity and experience,  
39 including experience on similar or related projects, (B) the capabilities  
40 and other qualifications of the firm's personnel, (C) performance data of  
41 all subcontractors the firm proposes to use, and (D) such other infor-  
42 mation related to the qualifications and capability of the firm to perform  
43 construction services for projects as may be prescribed by the secretary



1 of administration.

2 (2) The construction manager at risk shall publish a construction serv-  
3 ices bid notice in the Kansas register and in such other appropriate man-  
4 ner as may be determined by the bioscience authority. Each construction  
5 services bid notice shall include the request for bids and other bidding  
6 information prepared by the construction manager at risk and the state  
7 bioscience authority with the assistance of the division of facilities man-  
8 agement. The current statements of qualifications of and performance  
9 data on the firms submitting bid proposals shall be made available to the  
10 construction manager at risk and the bioscience authority by the state  
11 building advisory commission along with all information and evaluations  
12 developed regarding such firms by the secretary of administration under  
13 K.S.A. 75-3783, and amendments thereto. Each firm submitting a bid  
14 proposal shall be bonded in accordance with K.S.A. 60-1111, and amend-  
15 ments thereto, and shall present evidence of such bond to the construc-  
16 tion manager at risk prior to submitting a bid proposal. If a firm submit-  
17 ting a bid proposal fails to present such evidence, such firm shall be  
18 deemed unqualified for selection under this subsection. At the time for  
19 opening the bids, the construction manager at risk shall evaluate the bids  
20 and shall determine the lowest responsible bidder. The construction man-  
21 ager at risk shall enter into contracts with each firm performing the con-  
22 struction services for the project and make a public announcement of  
23 each firm selected in accordance with this subsection.

24 (h) The division of facilities management shall provide such infor-  
25 mation and assistance as may be requested by the bioscience authority or  
26 the negotiating committee for a project, including all or part of any project  
27 services as requested by the bioscience authority, and (1) shall prepare  
28 the request for proposals and publication information for each publication  
29 of notice under this section, subject to the provisions of this section, (2)  
30 shall prepare each contract for project services for a project, including  
31 each contract for construction services for a project, (3) shall conduct  
32 design development reviews for each project, (4) shall review and approve  
33 all construction documents for a project prior to soliciting bids or oth-  
34 erwise soliciting proposals from construction contractors or construction  
35 service providers for a project, (5) shall obtain and maintain copies of  
36 construction documents for each project, and (6) shall conduct periodic  
37 inspections of each project, including jointly conducting the final inspec-  
38 tion of each project.

39 (i) Notwithstanding the provisions of any other statute, the bioscience  
40 authority shall enter into one or more contracts with the division of fa-  
41 cilities management for each project for the services performed by the  
42 division of facilities management for the project as required by this section  
43 or at the request of the bioscience authority. The division of facilities

1 management shall receive fees from the bioscience authority to recover  
2 the costs incurred to provide such services pursuant to such contracts.

3 (j) Design development reviews and construction document reviews  
4 conducted by the division of facilities management shall be limited to  
5 ensuring only that the construction documents do not change the project  
6 description and that the construction documents comply with the stan-  
7 dards established under K.S.A. 75-3783, and amendments thereto, by the  
8 secretary of administration for the planning, design and construction of  
9 buildings and major repairs and improvements to buildings for state agen-  
10 cies, including applicable building and life safety codes and appropriate  
11 and practical energy conservation and efficiency standards.

12 (k) Each project for a bioscience research institution shall receive a  
13 final joint inspection by the division of facilities management and the  
14 bioscience authority. Each such project shall be officially accepted by the  
15 bioscience authority before such project is occupied or utilized by the  
16 bioscience research institution, unless otherwise agreed to in writing by  
17 the contractor and the bioscience authority as to the satisfactory comple-  
18 tion of the work on part of the project that is to be occupied and utilized,  
19 including any corrections of the work thereon.

20 (l) (1) The bioscience authority shall issue monthly reports of pro-  
21 gress on each project and shall advise and consult with the joint commit-  
22 tee on state building construction regarding each project. Change orders  
23 and changes of plans for a project shall be authorized or approved by the  
24 bioscience authority.

25 (2) No change order or change of plans for a project involving either  
26 cost increases of \$75,000 or more or involving a change in the proposed  
27 use of a project shall be authorized or approved by the bioscience au-  
28 thority without having first advised and consulted with the joint commit-  
29 tee on state building construction.

30 (3) Change orders or changes in plans for a project involving a cost  
31 increase of less than \$75,000 and any change order involving a cost re-  
32 duction, other than a change in the proposed use of the project, may be  
33 authorized or approved by the bioscience authority without prior consul-  
34 tation with the joint committee on state building construction. The bio-  
35 science authority shall report to the joint committee on state building  
36 construction all action relating to such change orders or changes in plans.

37 (4) If the bioscience authority determines that it is in the best interest  
38 of the state to authorize or approve a change order, a change in plans or  
39 a change in the proposed use of any project that the bioscience authority  
40 is required to first advise and consult with the joint committee on state  
41 building construction prior to issuing such approval and if no meeting of  
42 the joint committee is scheduled to take place within the next 10 business  
43 days, then the bioscience authority may use the procedure authorized by

1 subsection (d) of K.S.A. 75-1264, and amendments thereto, in lieu of  
2 advising and consulting with the joint committee at a meeting. In any  
3 such case, the bioscience authority shall mail a summary description of  
4 the proposed change order, change in plans or change in the proposed  
5 use of any project to each member of the joint committee on state build-  
6 ing construction and to the director of the legislative research depart-  
7 ment. If the bioscience authority provides notice and information to the  
8 members of the joint committee and to such director in the manner re-  
9 quired and subject to the same provisions and conditions that apply to  
10 the secretary of administration under such statute, and if less than two  
11 members of the joint committee contact the director of the legislative  
12 research department within seven business days of the date the summary  
13 description was mailed and request a presentation and review of any such  
14 proposed change order, change in plans or change in use at a meeting of  
15 the joint committee, then the bioscience authority shall be deemed to  
16 have advised and consulted with the joint committee about such proposed  
17 change order, change in plans or change in proposed use and may au-  
18 thorize or approve such proposed change order, change in plans or change  
19 in proposed use.

20 (m) The provisions of this section shall apply to each project author-  
21 ized by the bioscience authority under this act and shall not apply to any  
22 other capital improvement project of the bioscience authority or biosci-  
23 ence research institution that is specifically authorized by any other  
24 statute.

25 Sec. ~~8-22~~, [27.] K.S.A. 75-2540 is hereby amended to read as fol-  
26 lows: 75-2540. The state librarian may exchange, sell or loan indefinitely,  
27 duplicate books, sets of works or other duplicate or temporary material  
28 and the proceeds from any such sales may be used for miscellaneous  
29 library purposes. Any proceeds from sales shall be deposited in the state  
30 treasury to the credit of the state library fund. Any exchanges, sales or  
31 loans made hereunder shall be exempt from the provisions of K.S.A. 75-  
32 3739 to ~~75-3744~~ 75-3743, inclusive, and amendments thereto.

33 Sec. ~~9-23~~, [28.] K.S.A. 2009 Supp. 75-37,143 is hereby amended to  
34 read as follows: 75-37,143. (a) Notwithstanding any other provision of the  
35 law to the contrary, the state building advisory commission is hereby au-  
36 thorized to institute an alternative project delivery program whereby con-  
37 struction management at-risk or building design-build procurement proc-  
38 esses may be utilized on state agency public projects pursuant to this act.  
39 This authorization for construction management at-risk and building de-  
40 sign-build procurement shall be for the sole and exclusive use of planning,  
41 acquiring, designing, building, equipping, altering, repairing, improving,  
42 or demolishing any structure or appurtenance thereto, including facilities,  
43 utilities, or other improvements to any real property, but shall not include

- 1 highways, roads, bridges, dams, turnpikes or related structures, or stand-  
2 alone parking lots.
- 3 (b) To assist in the procurement of alternative project delivery con-  
4 struction services as defined under this act, the secretary of administration  
5 shall encourage firms engaged in the performance of construction services  
6 to submit annually to the secretary of administration and to the state  
7 building advisory commission a statement of qualifications and perform-  
8 ance data. Each statement shall include data relating to the following:
- 9 (1) The firm's capacity and experience, including experience on simi-  
10 lar or related projects;
- 11 (2) the capabilities and other qualifications of the firm's personnel;  
12 and
- 13 (3) such other information related to qualifications and capability of  
14 the firm to perform construction services for projects as may be described  
15 by the secretary of administration.
- 16 (c) The state building advisory commission shall approve those pro-  
17 jects for which the use of alternative project delivery procurement process  
18 is appropriate. In making such determination, the commission shall con-  
19 sider the following factors:
- 20 (1) The likelihood that the alternative project delivery method of pro-  
21 curement selected will serve the public interest by providing substantial  
22 savings of time or money over the traditional design-bid-build delivery  
23 process.
- 24 (2) The ability to overlap design and construction phases is required  
25 to meet the needs of the end user.
- 26 (3) The use of an accelerated schedule is required to make repairs  
27 resulting from an emergency situation.
- 28 (4) The project presents significant phasing or technical complexities,  
29 or both, requiring the use of an integrated team of designers and con-  
30 structors to solve project challenges during the design or preconstruction  
31 phase.
- 32 (5) The use of an alternative project delivery method will not en-  
33 courage favoritism in awarding the public contract or substantially dimin-  
34 ish competition for the public contract.
- 35 (d) When a request is made for alternative delivery procurement by  
36 an agency, the director shall publish a notice in the Kansas register that  
37 the state building advisory commission will be holding a public hearing  
38 with the opportunity for comment on such request. Notice shall be pub-  
39 lished at least 15 days prior to the hearing.
- 40 (e) Notwithstanding the provisions of K.S.A. 75-3738 through ~~75-~~  
41 ~~3744~~ 75-3743, and amendments thereto, if the state building advisory  
42 commission finds that the project does not qualify for the alternative  
43 project delivery methods included under this act, then the construction

1 services for such project shall be obtained pursuant to competitive bids  
2 and all contracts for construction services shall be awarded to the lowest  
3 responsible bidder in accordance with procurement procedures deter-  
4 mined and administered by the division of facilities management which  
5 shall be consistent with the provisions of K.S.A. 75-3738 through ~~75-3744~~  
6 ~~75-3743~~, and amendments thereto.

7 (f) The secretary of administration may adopt regulations pursuant to  
8 K.S.A. 75-3783, and amendments thereto, for the conduct of the alter-  
9 native project delivery process.

10 (g) When it is necessary in the judgment of the agency to obtain  
11 project services for a particular project as described under this act, the  
12 director shall publish a notice of the request for qualifications and pro-  
13 posals for the required project services at least 15 days prior to the com-  
14 mencement of such request in the Kansas register in accordance with  
15 K.S.A. 75-430a, and amendments thereto, and in such other appropriate  
16 manner as may be determined by the agency.

17 Sec. ~~10, 24~~ [29.] K.S.A. 2009 Supp. 75-4101 is hereby amended to  
18 read as follows: 75-4101. (a) There is hereby created a committee on  
19 surety bonds and insurance, which shall consist of the state treasurer, the  
20 attorney general and the commissioner of insurance or their respective  
21 designees. The commissioner of insurance shall be the chairperson of the  
22 committee and the director of purchases or the director's designee shall  
23 be ex officio secretary. The committee shall meet on call of the chairper-  
24 son and at such other times as the committee shall determine but at least  
25 once each month on the second Monday in each month. Meetings shall  
26 be held in the office of the commissioner of insurance. The members of  
27 the committee shall serve without compensation. The secretary shall be  
28 the custodian of all property, records and proceedings of the committee.  
29 Except as provided in this section and K.S.A. 74-4925, 74-4927, 75-6501  
30 through 75-6511 and K.S.A. 76-749, and amendments thereto, no state  
31 agency shall purchase any insurance of any kind or nature or any surety  
32 bonds upon state officers or employees, except as provided in this act.  
33 Except as otherwise provided in this section, health care coverage and  
34 health care services of a health maintenance organization for state officers  
35 and employees designated under subsection (c) of K.S.A. 75-6501, and  
36 amendments thereto, shall be provided in accordance with the provisions  
37 of K.S.A. 75-6501 through 75-6511, and amendments thereto.

38 (b) The Kansas turnpike authority may purchase group life, health  
39 and accident insurance or health care services of a health maintenance  
40 organization for its employees or members of the highway patrol assigned,  
41 by contract or agreement entered pursuant to K.S.A. 68-2025, and  
42 amendments thereto, to police toll or turnpike facilities, independent of  
43 the committee on surety bonds and insurance and of the provisions of

1 K.S.A. 75-6501 through 75-6511, and amendments thereto. Such author-  
2 ity may purchase liability insurance covering all or any part of its opera-  
3 tions and may purchase liability and related insurance upon all vehicles  
4 owned or operated by the authority independent of the committee on  
5 surety bonds and insurance and such insurance may be purchased without  
6 complying with K.S.A. 75-3738 through ~~75-3744~~ 75-3743, and amend-  
7 ments thereto. Any board of county commissioners may purchase such  
8 insurance or health care services, independent of such committee, for  
9 district court officers and employees any part of whose total salary is  
10 payable by the county. Nothing in any other provision of the laws of this  
11 state shall be construed as prohibiting members of the highway patrol so  
12 assigned to police toll or turnpike facilities from receiving compensation  
13 in the form of insurance or health maintenance organization coverage as  
14 herein authorized.

15 (c) The agencies of the state sponsoring a foster grandparent or senior  
16 companion program, or both, shall procure a policy of accident, personal  
17 liability and excess automobile liability insurance insuring volunteers par-  
18 ticipating in such programs against loss in accordance with specifications  
19 of federal grant guidelines. Such agencies may purchase such policy of  
20 insurance independent of the committee on surety bonds and insurance  
21 and without complying with K.S.A. 75-3738 through ~~75-3744~~ 75-3743,  
22 and amendments thereto.

23 (d) Any postsecondary educational institution as defined by K.S.A.  
24 ~~74-3201b~~ 76-711, and amendments thereto, may purchase insurance of  
25 any kind or nature except employee health insurance. Such insurance  
26 shall be purchased on a competitively bid or competitively negotiated  
27 basis in accordance with procedures prescribed by the state board of  
28 regents. Such insurance may be purchased independent of the committee  
29 on surety bonds and insurance and without complying with K.S.A. 75-  
30 3738 through ~~75-3744~~ 75-3743, and amendments thereto. Such insurance  
31 shall be purchased from an insurance company authorized to transact  
32 business in the state of Kansas.

33 (e) The state board of regents may enter into one or more group  
34 insurance contracts to provide health and accident insurance coverage or  
35 health care services of a health maintenance organization for all students  
36 attending a state educational institution as defined in K.S.A. 76-711, and  
37 amendments thereto, and such students' dependents, except that such  
38 insurance shall not provide coverage for elective procedures that are not  
39 medically necessary as determined by a treating physician. The partici-  
40 pation by a student in such coverage shall be voluntary. In the case of  
41 students who are employed by a state educational institution in a student  
42 position, the level of employer contributions toward such coverage shall  
43 be determined by the board of regents. The board of regents may adopt

1 rules and regulations necessary to administer and implement the provi-  
2 sions of this section.

3 Sec. ~~11~~ ~~25~~ **[30.]** K.S.A. 75-4101a is hereby amended to read as  
4 follows: ~~75-4101a.~~ All insurance contracts or contracts for health care  
5 services of a health maintenance organization purchased by the Kansas  
6 turnpike authority pursuant to K.S.A. 75-4101, and amendments thereto,  
7 shall be purchased by the authority in the manner prescribed for the  
8 purchase of supplies, material, equipment or contractual services under  
9 K.S.A. 75-3738 to ~~75-3744~~ 75-3743, inclusive, and amendments thereto.  
10 Any such contract having a premium or rate in excess of \$500 shall be  
11 purchased on sealed bids.

12 Sec. ~~12~~ ~~26~~ **[31.]** K.S.A. 2009 Supp. 75-4105 is hereby amended to  
13 read as follows: 75-4105. Except as provided in K.S.A. 2009 Supp. 75-  
14 4125, and amendments thereto, all surety bonds and insurance contracts  
15 purchased pursuant to this act shall be purchased by the committee in  
16 the manner prescribed for the purchase of supplies, materials, equipment  
17 or contractual services under K.S.A. 75-3738 to ~~75-3744~~ 75-3743, inclu-  
18 sive, and amendments thereto. The director of accounts and reports shall  
19 not pay any premium or rate on any surety bond or insurance contract  
20 until the purchase of such surety bond or contract shall have been ap-  
21 proved by the secretary of the committee. Surety bonds or insurance  
22 contracts having a premium or rate in excess of \$500 purchased here-  
23 under shall be purchased on sealed bids as provided by law for the pur-  
24 chase of other materials, equipment or contractual services. Where more  
25 than one state agency is covered by any bond or insurance contract, the  
26 committee shall prorate the cost of premiums or rates on any and all such  
27 bonds or contracts, except as provided in K.S.A. 75-4114, and amend-  
28 ments thereto, purchased as charges upon the funds of the state agency  
29 wherein any covered state officers or employees are employed or covered  
30 property is located or controlled. Such prorated charges shall constitute  
31 a lawful charge by the committee upon the funds available to any such  
32 state agency and shall be paid by each such state agency to the committee,  
33 or to the surety or insurance carrier if the committee requires it, in the  
34 manner provided by law for the payment of other obligations of such state  
35 agency.

36 Sec. ~~13~~ ~~27~~ **[32.]** K.S.A. 2009 Supp. 75-5288 is hereby amended to  
37 read as follows: 75-5288. (a) Notwithstanding the provisions of K.S.A. 75-  
38 3738 to ~~75-3744~~ 75-3743, inclusive, and amendments thereto or of any  
39 other laws to the contrary, the secretary of corrections may lease one or  
40 more buildings or portions thereof on the grounds of any correctional  
41 institution, together with the real estate needed for reasonable access to  
42 and egress from the leased buildings, for a term not to exceed 20 years,  
43 to a private individual, firm, corporation or other lawful entity for the

1 purpose of establishing and operating a business enterprise for the man-  
2 ufacture and processing of goods, wares or merchandise, or any other  
3 business or commercial enterprise deemed by the secretary of corrections  
4 to be consistent with the proper training and rehabilitation of inmates.

5 (b) Subject to approval by the secretary of corrections, any corpora-  
6 tion operating a factory or other business or commercial enterprise under  
7 this section may employ selected inmates of the correctional institution  
8 upon whose grounds it operates.

9 (c) Notwithstanding the provisions of K.S.A. 75-3738 to ~~75-3744~~ 75-  
10 3743, inclusive, article 12 of chapter 75 of the Kansas Statutes Annotated,  
11 article 58 of chapter 75 of the Kansas Statutes Annotated, and amend-  
12 ments thereto, or of any other laws to the contrary, the secretary of cor-  
13 rections may enter into agreements with a private individual, firm, cor-  
14 poration or other lawful entity for the purpose of accepting as a donation,  
15 lease or purchase, on behalf of the state any building or renovation of a  
16 building to be used for the manufacture and processing of goods, wares  
17 or merchandise, or any other business or commercial enterprise deemed  
18 by the secretary of corrections to be consistent with the proper training  
19 and rehabilitation of inmates.

20 (1) Such agreements may provide for the financing, design, construc-  
21 tion or renovation of such buildings on the grounds of correctional facil-  
22 ities. The secretary may not obligate the expenditure of state funds except  
23 as provided by K.S.A. 75-5281 and amendments thereto.

24 (2) Buildings constructed or renovated pursuant to this section shall  
25 become the property of the state as provided by such agreements or after  
26 20 years, whichever time period is shorter.

27 (d) Any business enterprise established under the provisions of this  
28 section shall be deemed a private enterprise and subject to all the laws,  
29 rules and regulations of this state governing the operation of similar busi-  
30 ness enterprises elsewhere in this state.

31 (e) The authority of the secretary of corrections over the institutions  
32 of the department of corrections and the inmates thereof shall not be  
33 diminished by this section.

34 Sec. ~~14.~~ ~~28.~~ **[33.]** K.S.A. 76-720 is hereby amended to read as fol-  
35 lows: 76-720. Athletic funds, student union funds and funds of student  
36 publications which were regularly published prior to July 1, 1955, may be  
37 deposited in local banks and be disbursed without compliance with K.S.A.  
38 75-3727 to ~~75-3744~~ 75-3743, inclusive, and amendments thereto. The  
39 amounts of fees and other receipts credited to such funds, and expendi-  
40 tures therefrom, shall be reported annually by the chief executive officer  
41 of each state educational institution to the director of accounts and  
42 reports.

43 Sec. ~~15.~~ ~~29.~~ **[34.]** K.S.A. 2009 Supp. 76-760 is hereby amended to



1 read as follows: 76-760. (a) As used in this section,

2 (1) “Capital improvement project” means a project which has a total  
3 cost of \$1,000,000 or less;

4 (2) “private moneys” means moneys from nongovernmental sources;  
5 and

6 (3) “state educational institution” has the meaning ascribed thereto  
7 by K.S.A. 76-711 and amendments thereto.

8 (b) Each state educational institution is authorized to construct build-  
9 ings and facilities on state-owned property of the state educational insti-  
10 tution from private moneys granted or given to such institution if the  
11 capital improvement projects for such buildings and facilities have re-  
12 ceived prior approval by the state board of regents and the plans and  
13 specifications for such projects have received prior approval by the sec-  
14 retary of administration. Such capital improvement projects shall be in-  
15 spected by the division of architectural services. Such capital improve-  
16 ment projects financed totally from private moneys shall be exempt from  
17 the provisions of K.S.A. 75-3739, 75-3740, 75-3740a, 75-3741, 75-3741a,  
18 75-3741b, 75-3742; and 75-3743 and ~~75-3744~~, and amendments thereto.  
19 Such capital improvement projects shall be totally financed from private  
20 moneys and the buildings and facilities constructed shall become the  
21 property of the state of Kansas upon completion and acceptance by the  
22 secretary of administration. No such capital improvement project for a  
23 building or facility shall be approved by the state board of regents without  
24 having first advised and consulted with the joint committee on state build-  
25 ing construction.

26 (c) Each state educational institution is authorized to repair, remodel  
27 or renovate state buildings and facilities of the state educational institution  
28 from private moneys granted or given to such institution if the capital  
29 improvement projects for such repairs, remodeling or renovations have  
30 received prior approval by the state board of regents and the plans and  
31 specifications of such projects have received prior approval by the sec-  
32 retary of administration. Such capital improvement projects shall be in-  
33 spected by the division of architectural services. Such capital improve-  
34 ment projects financed totally from private moneys shall be exempt from  
35 the provisions of K.S.A. 75-3739, 75-3740, 75-3740a, 75-3741, 75-3741a,  
36 75-3741b, 75-3742; and 75-3743 and ~~75-3744~~, and amendments thereto.  
37 Such capital improvement projects shall be totally financed from private  
38 moneys and the improvements shall become the property of the state of  
39 Kansas upon completion and acceptance by the secretary of administra-  
40 tion. No such capital improvement project to repair, remodel or renovate  
41 any such state building or facility shall be approved by the state board of  
42 regents without having first advised and consulted with the joint com-  
43 mittee on state building construction.

1     Sec. ~~16. 30.~~ **[35.]** K.S.A. 2009 Supp. 76-769 is hereby amended to  
2 read as follows: 76-769. (a) With regard to the acquisition of supplies,  
3 materials, equipment, goods, property, articles, products or services, a  
4 pilot project shall be conducted by the state board of regents in accord-  
5 ance with the provisions of this section. The state board of regents shall  
6 select not more than two of the state educational institutions, as defined  
7 by K.S.A. 76-711, and amendments thereto, to be the pilot universities  
8 in accordance with this section. The state board of regents shall select  
9 one of the following state educational institutions to be a pilot university:  
10 Emporia state university, Fort Hays state university or Pittsburg state  
11 university. The state board of regents may select one of the following  
12 state educational institutions to be a pilot university: Kansas state univer-  
13 sity, Wichita state university or the university of Kansas. If the state board  
14 of regents does not select Kansas state university, Wichita state university  
15 or the university of Kansas to be a pilot university, then the state board  
16 of regents shall select a second one of the following state educational  
17 institutions to be a pilot university: Emporia state university, Fort Hays  
18 state university or Pittsburg state university. During the period from June  
19 1, 2007, through June 30, 2010:

20     (1) The acquisition of any supplies, materials, equipment, goods,  
21 property or services for the pilot universities shall be in accordance with  
22 policies adopted by the state board of regents and no such acquisition  
23 during such period shall be subject to any statewide purchasing contract  
24 or other contract that is entered into under the provisions of K.S.A. 75-  
25 3737a through ~~75-3744~~ 75-3743, and amendments thereto, or any rules  
26 and regulations or policies adopted thereunder and that requires any state  
27 agency to make any such acquisition under any such contract, but nothing  
28 herein shall be construed as limiting the pilot universities from using  
29 contracts established by the director of purchases;

30     (2) the acquisition of any travel services for the pilot universities shall  
31 be in accordance with policies adopted by the state board of regents and  
32 no such acquisition during such period shall be subject to any statewide  
33 travel services contract or other travel services contract that is entered  
34 into under the provisions of K.S.A. 75-3737a through ~~75-3744~~ 75-3743,  
35 and amendments thereto, or any rules and regulations or policies adopted  
36 thereunder and that requires any state agency to acquire travel services  
37 under any such contract; and

38     (3) the acquisition of any articles or products produced by inmates in  
39 the custody of the secretary of corrections that may be required for the  
40 pilot universities shall be in accordance with policies adopted by the state  
41 board of regents and no such acquisition during such period shall be  
42 subject to the provisions of the prison-made goods act of Kansas requiring  
43 any such acquisition to be made from the secretary of corrections as

1 provided in K.S.A. 75-5273 through 75-5282 and amendments thereto,  
2 or any rules and regulations or policies adopted thereunder.

3 (b) The state board of regents shall submit a report to the legislature  
4 at the beginning of the regular session in 2007, 2008, 2009 and 2010  
5 regarding the activities of the pilot universities under the provisions of  
6 subsection (a). Each such report shall include any new or amended pol-  
7 icies adopted by the state board of regents for implementation of such  
8 activities, the amounts and kinds of expenditures by the pilot universities  
9 for activities under each paragraph of subsection (a), and shall include  
10 information regarding any savings experienced and any issues or problems  
11 encountered for all such acquisitions for the pilot universities under the  
12 provisions of subsection (a).

13 (c) The director of purchases shall submit a report to the legislature  
14 at the beginning of the regular session in 2007, 2008, 2009 and 2010  
15 regarding the impact of the pilot project conducted pursuant to subsec-  
16 tion (a) on the purchasing system of the department of administration  
17 and on the purchases and purchasing activities of state agencies other  
18 than pilot universities, including information regarding amounts and kinds  
19 of expenditures by such other state agencies and regarding other issues  
20 or problems encountered as a result of the pilot project.

21 Sec. ~~17. 31.~~ **[36.]** K.S.A. 76-770 is hereby amended to read as fol-  
22 lows: 76-770. (a) Each contract entered into by a state educational insti-  
23 tution for the acquisition of goods or services for a research and devel-  
24 opment activity shall be exempt from the provisions of K.S.A. 75-3739  
25 through ~~75-3744~~ 75-3743 and amendments thereto if the contract is fi-  
26 nanced 50% or more by moneys received from the Kansas technology  
27 enterprise corporation, federal agencies or other external sources.

28 (b) Nothing contained in article 32 of chapter 75 of the Kansas Stat-  
29 utes Annotated shall be construed to limit or prescribe the conduct of  
30 any in-state or out-of-state travel or to limit expense allowances for such  
31 travel which is undertaken for and funded as a part of any research and  
32 development activity of a state educational institution if such expense is  
33 funded 50% or more by moneys received from the Kansas technology  
34 enterprise corporation, federal agencies or other external sources. The  
35 provisions of K.S.A. 75-3208 and amendments thereto shall not apply to  
36 any such travel.

37 (c) As used in this section:

38 (1) “Research and development activity” means any center of excel-  
39 lence at a state educational institution, any research or development pro-  
40 ject or activity at the state educational institution funded under a research  
41 matching grant program of the Kansas technology enterprise corporation,  
42 or any other sponsored research project at a state educational institution;  
43 and

1 (2) “state educational institution” means a state educational institu-  
2 tion as defined by K.S.A. 76-711 and amendments thereto.

3 Sec. ~~18. 32.~~ **[37.]** K.S.A. 2009 Supp. 76-786 is hereby amended to  
4 read as follows: 76-786. (a) As used in this section, unless the context  
5 expressly provides otherwise:

6 (1) “Ancillary technical services” include, but shall not be limited to,  
7 geology services and other soil or subsurface investigation and testing  
8 services, surveying, adjusting and balancing of air conditioning, ventilat-  
9 ing, heating and other mechanical building systems, testing and consultant  
10 services that are determined by the board of regents to be required for  
11 a project;

12 (2) “architectural services” means those services described by sub-  
13 section (e) of K.S.A. 74-7003, and amendments thereto;

14 (3) “construction services” means the work performed by a construc-  
15 tion contractor to commence and complete a project;

16 (4) “construction management at-risk services” means the services  
17 provided by a firm which has entered into a contract with the board of  
18 regents to be the construction manager at risk for the value and schedule  
19 of the contract for a project, which is to hold the trade contracts and  
20 execute the work for a project in a manner similar to a general contractor  
21 and which is required to solicit competitive bids for the trade packages  
22 developed for a project and to enter into the trade contracts for a project  
23 with the lowest responsible bidder therefor, and may include, but are not  
24 limited to, such services as scheduling, value analysis, systems analysis,  
25 constructability reviews, progress document reviews, subcontractor in-  
26 volvement and prequalification, subcontractor bonding policy, budgeting  
27 and price guarantees, and construction coordination;

28 (5) “division of facilities management” means the division of facilities  
29 management of the department of administration;

30 (6) “engineering services” means those services described by subsec-  
31 tion (i) of K.S.A. 74-7003, and amendments thereto;

32 (7) “firm” means (A) with respect to architectural services, an indi-  
33 vidual, firm, partnership, corporation, association or other legal entity  
34 which is: (i) permitted by law to practice the profession of architecture;  
35 and (ii) maintaining an office in Kansas staffed by one or more architects  
36 who are licensed by the board of technical professions; or (iii) not main-  
37 taining an office in Kansas, but which is qualified to perform special ar-  
38 chitectural services that are required in special cases where in the judg-  
39 ment of the board of regents it is necessary to go outside the state to  
40 obtain such services; (B) with respect to engineering services or land  
41 surveying, an individual, firm, partnership, corporation, association or  
42 other legal entity permitted by law to practice the profession of engi-  
43 neering and provide engineering services or practice the profession of

1 land surveying and provide land surveying services, respectively; (C) with  
2 respect to construction management at-risk services, a qualified individ-  
3 ual, firm, partnership, corporation, association or other legal entity per-  
4 mitted by law to perform construction management at-risk services; (D)  
5 with respect to ancillary technical services or other services that are de-  
6 termined by the board of regents to be required for a project, a qualified  
7 individual, firm, partnership, corporation, association or other legal entity  
8 permitted by law to practice the required profession or perform the other  
9 required services, as determined by the board of regents; and (E) with  
10 respect to construction services, a qualified individual, firm, partnership,  
11 corporation, association, or other legal entity permitted by law to perform  
12 construction services for a project;

13 (8) “land surveying” means those services described in subsection (j)  
14 of K.S.A. 74-7003, and amendments thereto;

15 (9) “negotiating committee” means the board of directors of the sub-  
16 sidiary corporation formed under K.S.A. 2009 Supp. 76-781, and amend-  
17 ments thereto;

18 (10) “project” means (A) the project for the KSU food safety and  
19 security research facility, (B) the project for the KUMC biomedical re-  
20 search facility, (C) the project for the WSU engineering complex expansion  
21 and research laboratory, or (D) the project for the acquisition and  
22 installation of equipment for the KU biosciences research building, which  
23 are funded from the proceeds of the bonds authorized to be issued under  
24 K.S.A. 2009 Supp. 76-783, and amendments thereto, within the limitation  
25 of \$120,000,000, in the aggregate, plus all amounts required for costs of  
26 any bond issuance, costs of interest on any bond issued or obtained for  
27 such scientific research and development facilities and any required re-  
28 serves for payment of principal and interest on any such bond, and from  
29 any moneys received as gifts, grants or otherwise from any public or pri-  
30 vate nonstate source;

31 (11) “project services” means architectural services, engineering  
32 services, land surveying, construction management at-risk services, con-  
33 struction services, ancillary technical services or other construction-re-  
34 lated services determined by the board of regents to be required for a  
35 project; and

36 (12) “state building advisory commission” means the state building  
37 advisory commission created by K.S.A. 75-3780, and amendments  
38 thereto.

39 (b) The board of regents, when acting under authority of this act, and  
40 each project authorized by the board of regents under this act are exempt  
41 from the provisions of K.S.A. 75-1269, 75-3738 through 75-3741b, 75-  
42 3742 through ~~75-3744~~ 75-3743, and 75-3783, and amendments thereto,  
43 except as otherwise specifically provided by this act.

1 (c) Notwithstanding the provisions of K.S.A. 75-3738 through ~~75-~~  
2 ~~3744~~ 75-3743, and amendments thereto, or the provisions of any other  
3 statute to the contrary, all contracts for any supplies, materials or equip-  
4 ment for a project authorized by the board of regents under this act, shall  
5 be entered into in accordance with procurement procedures determined  
6 by the board of regents, subject to the provisions of this section, except  
7 that, in the discretion of the board of regents, any such contract may be  
8 entered into in the manner provided in and subject to the provisions of  
9 any such statute otherwise applicable thereto. Notwithstanding the pro-  
10 visions of K.S.A. 75-3738 through ~~75-3744~~ 75-3743, and amendments  
11 thereto, if the board of regents does not obtain construction management  
12 at-risk services for a project, the construction services for such project  
13 shall be obtained pursuant to competitive bids and all contracts for con-  
14 struction services for such project shall be awarded to the lowest respon-  
15 sible bidder in accordance with procurement procedures determined and  
16 administered by the board of regents which shall be consistent with the  
17 provisions of K.S.A. 75-3738 through ~~75-3744~~ 75-3743, and amendments  
18 thereto.

19 (d) When it is necessary in the judgment of the board of regents to  
20 obtain project services for a particular project by conducting negotiations  
21 therefor, the board of regents shall publish a notice of the commence-  
22 ment of negotiations for the required project services at least 15 days  
23 prior to the commencement of such negotiations in the Kansas register  
24 in accordance with K.S.A. 75-430a, and amendments thereto, and in such  
25 other appropriate manner as may be determined by the board of regents.

26 (e) (1) Notwithstanding the provisions of subsection (b) of K.S.A. 75-  
27 1251, and amendments thereto, or the provisions of any other statute to  
28 the contrary, as used in K.S.A. 75-1250 through 75-1270, and amend-  
29 ments thereto, with respect to the procurement of architectural services  
30 for a project authorized by the board of regents under this act, “negoti-  
31 ating committee” shall mean the board of directors of the subsidiary cor-  
32 poration formed under K.S.A. 2009 Supp. 76-781, and amendments  
33 thereto, and such board of directors shall negotiate a contract with a firm  
34 to provide any required architectural services for the project in accord-  
35 ance with the provisions of K.S.A. 75-1250 through 75-1270, and amend-  
36 ments thereto, except that no limitation on the fees for architectural serv-  
37 ices for the project shall apply to the fees negotiated by the board of  
38 directors for such architectural services.

39 (2) Notwithstanding the provisions of subsection (e) of K.S.A. 75-  
40 5802, and amendments thereto, or the provisions of any other statute to  
41 the contrary, as used in K.S.A. 75-5801 through 75-5807, and amend-  
42 ments thereto, with respect to the procurement of engineering services  
43 or land surveying services for a project authorized by the board of regents

1 under this act, “negotiating committee” shall mean the board of directors  
2 of the subsidiary corporation formed under K.S.A. 2009 Supp. 76-781,  
3 and amendments thereto, and such board of directors shall negotiate a  
4 contract with a firm to provide any required engineering services or land  
5 surveying services for the project in accordance with the provisions of  
6 K.S.A. 75-5801 through 75-5807, and amendments thereto.

7 (3) In any case of a conflict between the provisions of this section and  
8 the provisions of K.S.A. 75-1250 through 75-1270, or 75-5801 through  
9 75-5807, and amendments thereto, with respect to a project authorized  
10 by the board of regents under this act, the provisions of this section shall  
11 govern.

12 (f) (1) For the procurement of construction management at-risk  
13 services for projects under this act, the secretary of administration shall  
14 encourage firms engaged in the performance of construction manage-  
15 ment at-risk services to submit annually to the secretary of administration  
16 and to the state building advisory commission a statement of qualifications  
17 and performance data. Each statement shall include data relating to (A)  
18 the firm’s capacity and experience, including experience on similar or  
19 related projects, (B) the capabilities and other qualifications of the firm’s  
20 personnel, and (C) performance data of all consultants the firm proposes  
21 to use.

22 (2) Whenever the board of regents determines that a construction  
23 manager at risk is required for a project under this act, the board of  
24 regents shall notify the state building advisory commission and the state  
25 building advisory commission shall prepare a list of at least three and not  
26 more than five firms which are, in the opinion of the state building ad-  
27 visory commission, qualified to serve as construction manager at risk for  
28 the project. Such list shall be submitted to the negotiating committee,  
29 without any recommendation of preference or other recommendation.  
30 The negotiating committee shall have access to statements of qualifica-  
31 tions of and performance data on the firms listed by the state building  
32 advisory commission and all information and evaluations regarding such  
33 firms gathered and developed by the secretary of administration under  
34 K.S.A. 75-3783, and amendments thereto.

35 (3) The negotiating committee shall conduct discussions with each of  
36 the firms so listed regarding the project. The negotiating committee shall  
37 determine which construction management at-risk services are desired  
38 and then shall proceed to negotiate with and attempt to enter into a  
39 contract with the firm considered to be most qualified to serve as con-  
40 struction manager at risk for the project. The negotiating committee shall  
41 proceed in accordance with the same process with which negotiations are  
42 undertaken to contract with a firm to be a project architect under K.S.A.  
43 75-1257, and amendments thereto, to the extent that such provisions can

1 be made to apply. Should the negotiating committee be unable to  
2 negotiate a satisfactory contract with the firm considered to be most qual-  
3 ified, negotiations with that firm shall be terminated and shall undertake  
4 negotiations with the second most qualified firm, and so forth, in accord-  
5 ance with that statute.

6 (4) The contract to perform construction management at-risk services  
7 for a project shall be prepared by the division of facilities management  
8 and entered into by the board of regents with the firm contracting to  
9 perform such construction management at-risk services.

10 (g) (1) To assist in the procurement of construction services for pro-  
11 jects under this act, the secretary of administration shall encourage firms  
12 engaged in the performance of construction services to submit annually  
13 to the secretary of administration and to the state building advisory com-  
14 mission a statement of qualifications and performance data. Each state-  
15 ment shall include data relating to (A) the firm's capacity and experience,  
16 including experience on similar or related projects, (B) the capabilities  
17 and other qualifications of the firm's personnel, (C) performance data of  
18 all subcontractors the firm proposes to use, and (D) such other infor-  
19 mation related to the qualifications and capability of the firm to perform  
20 construction services for projects as may be prescribed by the secretary  
21 of administration.

22 (2) The construction manager at risk shall publish a construction serv-  
23 ices bid notice in the Kansas register and in such other appropriate man-  
24 ner as may be determined by the board of regents. Each construction  
25 services bid notice shall include the request for bids and other bidding  
26 information prepared by the construction manager at risk and the state  
27 board of regents with the assistance of the division of facilities manage-  
28 ment. The current statements of qualifications of and performance data  
29 on the firms submitting bid proposals shall be made available to the con-  
30 struction manager at risk and the board of regents by the state building  
31 advisory commission along with all information and evaluations developed  
32 regarding such firms by the secretary of administration under K.S.A. 75-  
33 3783, and amendments thereto. Each firm submitting a bid proposal shall  
34 be bonded in accordance with K.S.A. 60-1111, and amendments thereto,  
35 and shall present evidence of such bond to the construction manager at  
36 risk prior to submitting a bid proposal. If a firm submitting a bid proposal  
37 fails to present such evidence, such firm shall be deemed unqualified for  
38 selection under this subsection. At the time for opening the bids, the  
39 construction manager at risk shall evaluate the bids and shall determine  
40 the lowest responsible bidder. The construction manager at risk shall  
41 enter into contracts with each firm performing the construction services  
42 for the project and make a public announcement of each firm selected  
43 in accordance with this subsection.



1 (h) The division of facilities management shall provide such infor-  
2 mation and assistance as may be requested by the board of regents or the  
3 negotiating committee for a project, including all or part of any project  
4 services as requested by the board of regents, and (1) shall prepare the  
5 request for proposals and publication information for each publication of  
6 notice under this section, subject to the provisions of this section, (2) shall  
7 prepare each contract for project services for a project, including each  
8 contract for construction services for a project, (3) shall conduct design  
9 development reviews for each project, (4) shall review and approve all  
10 construction documents for a project prior to soliciting bids or otherwise  
11 soliciting proposals from construction contractors or construction service  
12 providers for a project, (5) shall obtain and maintain copies of construc-  
13 tion documents for each project, and (6) shall conduct periodic inspec-  
14 tions of each project, including jointly conducting the final inspection of  
15 each project.

16 (i) Notwithstanding the provisions of any other statute, the board of  
17 regents shall enter into one or more contracts with the division of facilities  
18 management for each project for the services performed by the division  
19 of facilities management for the project as required by this section or at  
20 the request of the board of regents. The division of facilities management  
21 shall receive fees from the board of regents to recover the costs incurred  
22 to provide such services pursuant to such contracts.

23 (j) Design development reviews and construction document reviews  
24 conducted by the division of facilities management shall be limited to  
25 ensuring only that the construction documents do not change the project  
26 description and that the construction documents comply with the stan-  
27 dards established under K.S.A. 75-3783, and amendments thereto, by the  
28 secretary of administration for the planning, design and construction of  
29 buildings and major repairs and improvements to buildings for state agen-  
30 cies, including applicable building and life safety codes and appropriate  
31 and practical energy conservation and efficiency standards.

32 (k) Each project for a state educational institution shall receive a final  
33 joint inspection by the division of facilities management and the board of  
34 regents. Each such project shall be officially accepted by the board of  
35 regents before such project is occupied or utilized by the state educational  
36 institution, unless otherwise agreed to in writing by the contractor and  
37 the board of regents as to the satisfactory completion of the work on part  
38 of the project that is to be occupied and utilized, including any corrections  
39 of the work thereon.

40 (l) (1) The board of regents shall issue monthly reports of progress  
41 on each project and shall advise and consult with the joint committee on  
42 state building construction regarding each project. Change orders and  
43 changes of plans for a project shall be authorized or approved by the

1 board of regents.

2 (2) No change order or change of plans for a project involving either  
3 cost increases of \$75,000 or more or involving a change in the proposed  
4 use of a project shall be authorized or approved by the board of regents  
5 without having first advised and consulted with the joint committee on  
6 state building construction.

7 (3) Change orders or changes in plans for a project involving a cost  
8 increase of less than \$75,000 and any change order involving a cost re-  
9 duction, other than a change in the proposed use of the project, may be  
10 authorized or approved by the board of regents without prior consultation  
11 with the joint committee on state building construction. The board of  
12 regents shall report to the joint committee on state building construction  
13 all action relating to such change orders or changes in plans.

14 (4) If the board of regents determines that it is in the best interest  
15 of the state to authorize or approve a change order, a change in plans or  
16 a change in the proposed use of any project that the board of regents is  
17 required to first advise and consult with the joint committee on state  
18 building construction prior to issuing such approval and if no meeting of  
19 the joint committee is scheduled to take place within the next 10 business  
20 days, then the board of regents may use the procedure authorized by  
21 subsection (d) of K.S.A. 75-1264, and amendments thereto, in lieu of  
22 advising and consulting with the joint committee at a meeting. In any  
23 such case, the board of regents shall mail a summary description of the  
24 proposed change order, change in plans or change in the proposed use  
25 of any project to each member of the joint committee on state building  
26 construction and to the director of the legislative research department.  
27 If the board of regents provides notice and information to the members  
28 of the joint committee and to such director in the manner required and  
29 subject to the same provisions and conditions that apply to the secretary  
30 of administration under such statute, and if less than two members of the  
31 joint committee contact the director of the legislative research depart-  
32 ment within seven business days of the date the summary description was  
33 mailed and request a presentation and review of any such proposed  
34 change order, change in plans or change in use at a meeting of the joint  
35 committee, then the board of regents shall be deemed to have advised  
36 and consulted with the joint committee about such proposed change or-  
37 der, change in plans or change in proposed use and may authorize or  
38 approve such proposed change order, change in plans or change in pro-  
39 posed use.

40 (m) The provisions of this section shall apply to each project author-  
41 ized by the board of regents under this act and shall not apply to any  
42 other capital improvement project of the board of regents or of any state  
43 educational institution that is specifically authorized by any other statute.

1     Sec. ~~19. 33.~~ **[38.]** K.S.A. 20-156, 20-1a13, 74-8704, 74-8709, 75-  
2 2540, 75-3744, 75-4101a, 76-720 and 76-770 and K.S.A. 2009 Supp. 40-  
3 3403, 74-8705, 74-99b16, 75-37,143, 75-4101, 75-4105, 75-5288, 76-760,  
4 76-769 and 76-786 are hereby repealed.  
5     Sec. ~~20. 34.~~ **[39.]** This act shall take effect and be in force from and  
6 after its publication in the statute book.