

ENROLLED SENATE
BILL NO. 1070

By: Price and Herbert of the
Senate

and

Steidley of the House

An Act relating to schools; defining term; authorizing school districts to enter into energy conservation contracts; stating purpose of contract; specifying services for which school districts may enter into a contract; requiring certain bond; stating amount of bond; providing certain contractual requirements and limitations; authorizing lease-purchase contracts; providing limitations; requiring competitive bidding procedures; stating requirements for request for proposals; authorizing certain negotiations; authorizing confidentiality of certain proposals; requiring certain notice of intent to be published; making proposals open for public inspection; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5-131.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "energy conservation measures" means one or more of the following items:

1. Insulation of the building structure or systems within the building;

2. Storm windows or doors, caulking or weather-stripping, multiglazed windows or doors, heat-absorbing or heat-reflective, glazed, and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;

3. Automatic or computerized energy control systems;

4. Heating, ventilating or air conditioning system modifications or replacements;

5. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system, but not for the sole purpose of increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building codes for the lighting system after the proposed modifications are made;

6. Indoor air quality improvements; and

7. Energy recovery systems.

B. The board of education of any school district in compliance with the provisions of this section, may enter into an energy conservation contract for the purpose of implementing energy

conservation measures designed to reduce the energy consumption of school facilities.

C. Before entering into an energy conservation contract, the board of education shall require the provider of the energy conservation measures to file with the board of education a declining balance corporate surety bond issued by a corporation authorized to conduct business in this state and licensed to issue such bonds by the State Insurance Commissioner in an amount equal to at least twenty-five percent (25%) of the board of education's financial obligation and guaranteed savings. The bond shall be payable to the board of education and be conditioned on the faithful performance of the provisions of the energy conservation contract and on the complete performance of the provisions of paragraph 1 of subsection E of this section. The corporate surety bond shall be for the term of the energy conservation contract associated with the project.

D. The board of education may enter into an energy conservation contract for a period of more than one (1) year for the implementation of energy conservation measures with a person or business entity if the board of education finds that the amount the school district would spend on the energy conservation measures will not exceed the amount to be saved in energy costs over the term of the energy conservation contract from the date of installation. If the term of an energy conservation contract exceeds one (1) year, the contractual obligation of the school district in any year during the term of the energy conservation contract may not exceed the total energy savings including, but not limited to, electrical, gas or other utility cost savings and savings from lowered maintenance contracts with outside providers, as determined by the board of education in this subsection, divided by the number of years in the energy conservation contract term. All projected savings shall be guaranteed by the entity providing the energy conservation measures. Energy conservation contracts shall not permit the carry-forward of savings above the guaranteed amount from one year to a future year shortfall. Maintenance for energy conservation measures may be a part of the energy conservation contract. The board of education shall consider all costs of the energy conservation measures, including costs of design, engineering, installation, maintenance, maintenance tools and equipment, spare parts, repairs, and debt service.

E. In addition to any other provisions, the energy conservation contract shall:

1. Provide that all savings should be tracked and audited by the contractor with an annual report provided to the board of education along with a payment by the provider for reimbursement of savings not realized;

2. Be for a term of years that is not less than the term of years of any associated lease-purchase agreement;

3. Provide that the board of education may terminate the agreement for nonperformance by the contractor;

4. Contain a nonappropriation clause; and

5. Contain a baseline calculation and an energy savings calculation. The calculations shall be performed in accordance with the procedures used by the State of Oklahoma Department of Central Services in making such calculations in the Master Agreement for Energy Savings Contracts.

F. An energy conservation contract, with respect to existing buildings or facilities, may be funded through a lease-purchase agreement that meets federal tax requirements for tax-free municipal

leasing or long-term financing. The term of the lease-purchase agreement shall not exceed:

1. Seven (7) years if the amount of the agreement is Two Hundred Fifty Thousand Dollars (\$250,000.00) or less;
2. Eight (8) years if the amount of the agreement is over Two Hundred Fifty Thousand Dollars (\$250,000.00), but not more than Five Hundred Thousand Dollars (\$500,000.00); and
3. Ten (10) years if the amount of the agreement is over Five Hundred Thousand Dollars (\$500,000.00).

Lease-purchase agreements for energy conservation measures shall be considered separate from the energy conservation contract and shall contain a nonappropriation clause.

G. Energy conservation contracts and lease-purchase agreements under this section shall be let under competitive proposal procedures. Notice of the request for proposals shall be published in the manner provided for competitive bidding. Requests for proposals must solicit quotations and must specify the relative importance of guaranteed savings, price, financial performance and stability, quality, technical ability, experience and other evaluation factors. The board of education shall review the proposals it receives, and shall select at least three for more detailed consideration. The initial screening should consider the ability of the offeror to provide energy conservation measures as well as the following factors:

1. Specialized experience in the type of work contemplated;
2. Capacity to accomplish the work in the required time;
3. Past performance; and
4. Estimated savings.

The board of education shall negotiate the contract with the selected offeror. The negotiated scope and contract rate shall be reported to the board of education for the approval of the award of the contract. If the board of education and the first-choice offeror cannot reach an agreement, their negotiations shall be terminated and negotiations with the second-choice offeror shall commence. If the board of education and the second-choice offeror cannot reach an agreement, their negotiations shall be terminated and negotiations with the third-choice offeror shall commence. If the board of education and the third-choice offeror cannot reach an agreement, then all negotiations shall be terminated. Should the board of education be unable to negotiate a satisfactory contract with any of the three selected offerors, the board of education shall select additional offerors in order of their competency and qualifications and shall continue negotiations in accordance with the provisions of this subsection until an agreement is reached. The energy conservation contract and lease-purchase agreement shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the school district considering the guaranteed savings and other evaluation factors set forth in the request for proposals. In order to determine the energy savings measures to be considered by proposers, the board of education may hire an independent energy consultant. Fees assessed by the consultant will be paid from proceeds of any financing associated with the energy conservation contract.

H. If provided in a request for proposals under subsection G of this section, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals confidential during negotiations.

I. Upon completion of all negotiations, the board of education shall give notice of intent to award an energy conservation contract

and lease-purchase agreement to the selected offeror. The notice of intent shall be published in the same manner as the notice of request for proposals. All proposals shall be open for public inspection after the notice of intent to award is published, but trade secrets and proprietary information clearly identified in the proposals shall not be open for public inspection.

SECTION 2. This act shall become effective July 1, 1996.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 24th day of April, 1996.

President of the Senate

Passed the House of Representatives the 18th day of April, 1996.

Speaker of the House of Representatives