

SHORT TITLE: Political subdivision; authorizing political subdivisions to enter into certain contracts for energy conservation measures. Effective date. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1312

By: Morgan

AS INTRODUCED

An Act relating to political subdivisions; creating the Oklahoma Municipal Energy Conservation Act; providing short title; defining terms; authorizing municipalities to enter into certain contracts; stating purpose of contract; specifying services for which municipalities may enter into a contract; requiring certain performance bond; stating amount of bond; authorizing municipalities to enter into contract for a period of more than one year; providing exception; providing certain contractual limitations; authorizing lease-purchase contracts and providing limitations; authorizing competitive bidding procedures; stating requirements for request for proposals; stating requirement for amending contract requiring certain discussions; requiring certain fair practices; authorizing confidentiality of certain proposals; requiring certain notice of intent to be published; providing for public inspection; creating the Oklahoma County Energy Conservation Act; providing short title; defining terms; authorizing counties to enter into certain contracts; stating purpose of contract; specifying services for which counties may enter into a contract; requiring certain performance bond; stating amount of bond; authorizing counties to enter into contract for a period of more than

one year; providing exception; providing certain contractual limitations; authorizing lease-purchase contracts and providing limitations; authorizing competitive bidding procedures; stating requirements for request for proposals; stating requirement for amending contract requiring certain discussions; requiring certain fair practices; authorizing confidentiality of certain proposals; requiring certain notice of intent to be published; providing for public inspection; amending Section 1, Chapter 140, O.S.L. 1996 (70 O.S. Supp. 1997, Section 5-131.2), which relates to school districts; adding definitions to energy conservation measures; deleting corporate surety bond requirement; providing for performance bond; clarifying language; providing for ten year savings period; removing guaranty provisions; removing carry-forward provisions; removing additional requirements; providing for maximum lease purchase period; removing contingent lease purchase periods; removing certain screening provisions; providing contract awarding criteria; removing certain negotiation requirements; providing for equitable treatment of offerors; providing for short title; 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 17-217 of Title 11, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Municipal Energy Conservation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-218 of Title 11, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Municipal Energy Conservation Act:

"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;
7. Energy recovery systems;
8. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

9. Any life safety measures that provide long-term operating cost reductions; and

10. Building operation programs that reduce the operating costs.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17-219 of Title 11, unless there is created a duplication in numbering, reads as follows:

A. The municipal governing body of any municipality 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 municipal facilities.

B. Before entering into an energy conservation contract, the municipal governing body shall require the provider of the energy conservation measures to file with the municipal governing body a performance bond that is in an amount the municipal governing body finds reasonable and necessary to protect the interests of the municipality and that covers the value of the guaranteed savings on the contract and is conditioned on the faithful execution of the terms of the contract.

C. The municipal governing body 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 municipal governing body finds that the amount the municipality would spend on the energy conservation measures will not exceed the amount to be saved in energy costs over ten (10) years from the date of installation. If the term of an energy conservation contract exceeds one (1) year, the contractual obligation of the municipality 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 municipal governing body in this subsection, divided by the number of years in the energy conservation contract term. Maintenance for energy conservation measures may be a part of the energy conservation contract. The municipal governing body 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.

D. 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 ten (10) years.

E. 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 contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the municipality considering the guaranteed savings and other evaluation factors set forth in the request for proposals.

F. In accordance with the terms of a request for proposals under subsection E of this section and with rules adopted by the municipal governing body, the municipal governing body may conduct discussions with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the

best final offers, the municipal governing body may allow proposal revisions after submissions and before the award of the contract.

G. If provided in a request for proposals under subsection E 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.

H. Upon completion of all negotiations, the municipal governing body 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 456 of Title 19, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma County Energy Conservation Act".

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 457 of Title 19, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma County Energy Conservation Act:

"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;

7. Energy recovery systems;

8. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

9. Any life safety measures that provide long-term operating cost reductions; and

10. Building operation programs that reduce the operating costs.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 458 of Title 19, unless there is created a duplication in numbering, reads as follows:

A. The county commissioners of any county 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 county facilities.

B. Before entering into an energy conservation contract, the county commissioners shall require the provider of the energy conservation measures to file with the county commissioners a performance bond that is in an amount the county commissioners find reasonable and necessary to protect the interests of the county and that covers the value of the guaranteed savings on the contract and

is conditioned on the faithful execution of the terms of the contract.

C. The county commissioners 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 county commissioners find that the amount the county would spend on the energy conservation measures will not exceed the amount to be saved in energy costs over ten (10) years from the date of installation. If the term of an energy conservation contract exceeds one (1) year, the contractual obligation of the county 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 county commissioners in this subsection, divided by the number of years in the energy conservation contract term. Maintenance for energy conservation measures may be a part of the energy conservation contract. The county commissioners 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.

D. 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 ten (10) years.

E. 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 contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the county considering the guaranteed savings and other evaluation factors set forth in the request for proposals.

F. In accordance with the terms of a request for proposals under subsection E of this section and with rules adopted by the county commissioners, the county commissioners may conduct discussions with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, the county commissioners may allow proposal revisions after submissions and before the award of the contract.

G. If provided in a request for proposals under subsection E 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.

H. Upon completion of all negotiations, the county commissioners 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 7. AMENDATORY Section 1, Chapter 140, O.S.L. 1996, as amended by Section 15, Chapter 276, O.S.L. 1996 (70 O.S. Supp. 1997, Section 5-131.2), is amended to read as follows:

Section 5-131.2 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;

8. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

9. Any life safety measures that provide long-term operating cost reductions; and

10. Building operation programs that reduce the operating costs.

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~~ a performance bond that is in an amount the board finds reasonable and necessary to protect the interests of the school district and that covers the value of the guaranteed savings on the contract and is conditioned on the faithful execution of the terms of the contract.

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~~ ten (10) years 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 ten (10) years.

~~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. F. 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 two 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 contract 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.

G. ~~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, then all negotiations shall be terminated. Should the board of education be unable to negotiate a satisfactory contract with any of the two 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.~~ In accordance with the terms of a request for proposals under this subsection and with rules adopted by the board of education, the school district may conduct discussions with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, the school district may allow proposal revisions after submissions and before the award of the 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 8. This act shall become effective July 1, 1998.

SECTION 9. 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.

46-2-2554

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