

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1251

By: Robinson of the Senate

and

Paulk of the House

An Act relating to cities, counties, and schools; amending Sections 11 and 12, Chapter 391, O.S.L. 1998 (19 O.S. Supp. 1999, Sections 457 and 458), and amending Section 1, Chapter 140, O.S.L. 1996, as amended by Section 15, Chapter 276, O.S.L. 1996 (70 O.S. Supp. 1999, Section 5-131.2), which relate to the Oklahoma County Energy Conservation Act and to energy conservation contracts; including cities in purview of county act; \* \* \* and declaring an emergency.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to cities, counties, and schools; amending Sections 10, 11 and 12, Chapter 391, O.S.L. 1998 (19 O.S. Supp. 1999, Sections 456, 457 and 458), and amending Section 1, Chapter 140, O.S.L. 1996, as amended by Section 15, Chapter 276, O.S.L. 1996 (70 O.S. Supp. 1999, Section 5-131.2), which relate to the Oklahoma County Energy Conservation Act and to energy conservation contracts for political subdivisions and boards of education; modifying short title; including cities in purview of county act; clarifying term of contract and lease-purchase agreement; providing for certain options for shorter bond terms; providing for repayments; excluding certain payments; requiring that sufficient funds are made available for continuation of certain contracts; changing means of calculating energy savings and repayment period; providing for contents of terms of certain contracts; removing certain publication requirements; requiring inclusion of specified energy savings calculation methodology in contracts; changing definition; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 10, Chapter 391, O.S.L. 1998 (19 O.S. Supp. 1999, Section 456), is amended to read as follows:

Section 456. Sections ~~10 through 12~~ 457 and 458 of this ~~act~~ title shall be known and may be cited as the "Oklahoma County and City Energy Conservation Act".

SECTION 2. AMENDATORY Section 11, Chapter 391, O.S.L. 1998 (19 O.S. Supp. 1999, Section 457), is amended to read as follows:

Section 457. As used in the Oklahoma County and City 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. Co-generation 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. AMENDATORY Section 12, Chapter 391, O.S.L. 1998 (19 O.S. Supp. 1999, Section 458), is amended to read as follows:

Section 458. A. ~~The county commissioners of any county governing board of a political subdivision of this state,~~ 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 of the political subdivision.

B. ~~Before entering into an energy conservation contract, the county commissioners~~ 1. The governing board shall require the provider of the energy conservation measures to file with the ~~county commissioners~~ governing board a performance bond that is in an amount the ~~county commissioners find~~ governing board finds reasonable and necessary to protect the interests of the ~~county political subdivision~~ 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.

2. If bonding industry limitations prevent execution of a performance bond which covers guaranteed savings for the entire term of the lease-purchase agreement the contract may allow an option for:

- a. a performance bond which covers guaranteed savings for a shorter bond term. At the completion of the bond term, a new bond may be executed which covers

guaranteed savings for an additional period of years.  
This process may be continued in like manner for the  
duration of the lease-purchase agreement as specified  
in subsection D of this section, or

- b. a performance bond which covers guaranteed savings for  
a shorter term. At the completion of the bond term,  
if the bond cannot be renewed as provided in  
subparagraph a of this paragraph and if there has been  
a guaranteed savings shortfall during the last twelve  
(12) months, the governing board may assume a  
continued annual shortfall of the same amount and  
request repayment from the contractor of the net  
present value of the shortfall through the end of the  
lease repayment period. The discount factor to  
calculate the net present value shall be the annual  
percentage rate of the lease-purchase agreement.

C. 1. ~~The county commissioners~~ governing board 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:~~

- a. the governing board finds that the amount the ~~county~~  
political subdivision would spend on the energy  
conservation measures, excluding any initial partial  
payment, will not exceed the ~~amount to be saved~~ total  
savings in energy costs over ~~ten (10) years~~ the  
repayment period from the date of installation, and
- b. the contract contains a provision that such contract  
will continue for the next fiscal year of the  
political subdivision only if the governing board  
appropriates adequate and sufficient funds for the  
contract for the next fiscal year.

2. The term of the energy conservation contract and the lease-purchase agreement shall include the installation period and the lease repayment period.

3. If the term of an energy conservation contract exceeds one (1) year, the contractual obligation of the ~~county~~ political subdivision, excluding any initial partial payment, 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~~ governing board.

4. Maintenance for energy conservation measures may be a part of the energy conservation contract.

5. The ~~county commissioners~~ governing board shall consider all costs of the energy conservation measures, including, but not limited to, costs of design, engineering, installation, maintenance, maintenance tools and equipment, spare parts, repairs, and debt service.

D. 1. 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.

2. The ~~term~~ repayment period of the lease-purchase agreement shall not exceed ~~ten (10) years~~ the lesser of fifteen (15) years or the weighted average equipment life of equipment to be installed under the energy conservation contract.

E. 1. Energy conservation contracts and lease-purchase agreements ~~under~~ executed pursuant to this section shall be let under competitive proposal procedures.

2. 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.

3. The contract shall be awarded to the responsible offeror whose proposal, following negotiations, is determined to be the most advantageous to the ~~county~~ political subdivision 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~~ promulgated by the ~~county commissioners governing board~~, the ~~county commissioners governing board~~ 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 governing board~~ 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~~ contract with the selected provider has been executed, but trade secrets and proprietary information clearly identified in the proposals shall not be open for public inspection.

I. Energy conservation contracts shall contain a baseline calculation and energy savings calculation methodology. The calculations shall be performed in accordance with the procedures used by the International Protocol for Measurement and Verification Procedures (IPMVP) or succeeding standard of the United States Department of Energy.

SECTION 4. AMENDATORY Section 1, Chapter 140, O.S.L. 1996, as amended by Section 15, Chapter 276, O.S.L. 1996 (70 O.S. Supp. 1999, 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; and
8. Energy awareness education programs.

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~~ 1.  
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 performance bond that is in an amount the board finds reasonable and necessary to protect the interests of the board 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.

2. If bonding industry limitations prevent execution of a performance bond which covers guaranteed savings for the entire term of the lease-purchase agreement the contract may allow an option for:

- a. a performance bond which covers guaranteed savings for a shorter term. At the completion of the bond term, a new bond may be executed which covers guaranteed savings for an additional period of years. This process may be continued in like manner for the duration of the lease-purchase agreement as specified by subsection D of this section, or

b. a performance bond which covers guaranteed savings for a shorter term. At the completion of the bond term, if the bond cannot be renewed as provided in subparagraph a of this paragraph and if there has been a guaranteed savings shortfall during the last twelve (12) months, the board of education may assume a continued annual shortfall of the same amount and request repayment from the contractor of the net present value of the shortfall through the end of the lease repayment period. The discount factor to calculate the net present value shall be the annual percentage rate of the lease-purchase agreement.

D. 1. 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, excluding any initial partial payment, will not exceed the ~~amount to be saved in energy costs~~ total savings over the ~~term~~ repayment period of the energy conservation contract from the date of installation.

2. The term of the energy conservation contract and the lease-purchase agreement shall include the installation period and the lease repayment period.

3. If the term of an energy conservation contract exceeds one (1) year, the contractual obligation of the school district, excluding any initial partial payment, 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~~ Savings shall be guaranteed by the entity providing the energy conservation measures.

4. Energy conservation contracts shall not permit the carry-forward of savings above the guaranteed amount from one year to a future year shortfall.

5. Maintenance for energy conservation measures may be a part of the energy conservation contract.

6. 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~~ International Protocol for Measurement and Verification Procedures (IPMVP) or succeeding standard of the United States Department of Energy.

F. 1. 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.

2. The ~~term~~ repayment period 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) the lesser of fifteen (15) years or the weighted average equipment life to be installed under the energy conservation contract.~~

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

G. 1. Energy conservation contracts and lease-purchase agreements ~~under~~ executed pursuant to this section shall be let under competitive proposal procedures.

2. 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.

3. 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~~

a. specialized experience in the type of work contemplated;

~~2. Capacity~~

b. capacity to accomplish the work in the required time~~+~~l

~~3. Past~~

c. past performance~~+~~l and

~~4. Estimated~~

d. estimated savings.

4. 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.

5. a. 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.

b. If the board of education and the second-choice offeror cannot reach an agreement, then all negotiations shall be terminated.

c. 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.

6. 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.

7. 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~~ contract with the selected provider has been executed, but trade secrets and proprietary information clearly identified in the proposals shall not be open for public inspection.

SECTION 5. 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 House of Representatives the 5th day of April, 2000.

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Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2000.

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President of the Senate