

1 ENGROSSED HOUSE  
2 BILL NO. 3536

By: Caldwell of the House

3 and

4 McCortney of the Senate  
5  
6

7 An Act relating to energy conservation; amending 19  
8 O.S. 2011, Sections 457 and 458, which relate to the  
9 Oklahoma County and City Energy Conservation Act;  
10 modifying term; revising requirements for repayment  
11 period of certain agreement; modifying selection and  
12 contracting procedures for energy conservation  
13 contracts; requiring certain audits; amending 62 O.S.  
14 2011, Section 318, as amended by Section 1, Chapter  
15 267, O.S.L. 2015 (62 O.S. Supp. 2017, Section 318),  
16 which relates to performance-based efficiency  
17 contracts; modifying term; updating agency name;  
18 revising requirements for term of certain agreements;  
19 deleting requirement to consult with State Bond  
20 Advisor in specified instances; authorizing certain  
21 considerations in calculating cost savings; amending  
22 70 O.S. 2011, Section 5-131.2, which relates to  
23 energy conservation measures; modifying term;  
24 revising requirements for repayment period of certain  
agreement; modifying selection and contracting  
procedures for energy conservation contracts;  
requiring certain audits; and providing an effective  
date.

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

SECTION 1. AMENDATORY 19 O.S. 2011, Section 457, is  
amended to read as follows:

1       Section 457. As used in the Oklahoma County and City Energy  
2 Conservation Act, "energy conservation measures" means one or more  
3 of the following items:

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

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

11       3. Automatic or computerized energy control systems;

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

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

20       6. Indoor air quality improvements;

21       7. Energy recovery systems;

22       8. Co-generation systems that produce steam or forms of energy  
23 such as heat, as well as electricity, for use primarily within a  
24 building or complex of buildings;

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

3        10. Water-metering devices that increase efficiency or accuracy  
4 of water measurement and energy reduction; and

5        11. Building operation programs that reduce the operating  
6 costs.

7        SECTION 2.        AMENDATORY        19 O.S. 2011, Section 458, is  
8 amended to read as follows:

9        Section 458. A. The governing board of a political subdivision  
10 of this state, in compliance with the provisions of this section,  
11 may enter into an energy conservation contract for the purpose of  
12 implementing energy conservation measures designed to reduce the  
13 energy consumption of facilities of the political subdivision.

14        B. 1. The governing board shall require the provider of the  
15 energy conservation measures to file with the governing board a  
16 performance bond that is in an amount the governing board finds  
17 reasonable and necessary to protect the interests of the political  
18 subdivision and that covers the value of the guaranteed savings on  
19 the contract and is conditioned on the faithful execution of the  
20 terms of the contract.

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

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

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

20           C.   1.  The governing board may enter into an energy  
21 conservation contract for a period of more than one (1) year for the  
22 implementation of energy conservation measures with a person or  
23 business entity if:  
24

1           a.    the governing board finds that the amount the  
2                   political subdivision would spend on the energy  
3                   conservation measures, excluding any initial partial  
4                   payment, will not exceed the total savings in energy  
5                   costs over the repayment period from the date of  
6                   installation, and

7           b.    the contract contains a provision that such contract  
8                   will continue for the next fiscal year of the  
9                   political subdivision only if the governing board  
10                  appropriates adequate and sufficient funds for the  
11                  contract for the next fiscal year.

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

15           3.    If the term of an energy conservation contract exceeds one  
16 (1) year, the contractual obligation of the political subdivision,  
17 excluding any initial partial payment, in any year during the term  
18 of the energy conservation contract may not exceed the total  
19 savings, including, but not limited to, electrical, gas, or other  
20 utility cost savings and savings from lowered maintenance as  
21 determined by the governing board.

22           4.    Maintenance for energy conservation measures may be a part  
23 of the energy conservation contract.  
24

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

5        D. 1. An energy conservation contract, with respect to  
6 existing buildings or facilities, may be funded through a lease-  
7 purchase agreement that meets federal tax requirements for tax-free  
8 municipal leasing or long-term financing.

9        2. The repayment period of the lease-purchase agreement shall  
10 not exceed the ~~lesser~~ greater of ~~fifteen (15)~~ twenty (20) years or  
11 the weighted average equipment life of equipment to be installed  
12 under the energy conservation contract.

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

16        ~~2. Notice of the request for proposals shall be published in~~  
17 ~~the manner provided for competitive bidding~~ Prior to entering into  
18 an energy conservation contract, the governing board shall solicit a  
19 request for qualification from one or more energy service company  
20 providers. Requests for ~~proposals~~ qualification must solicit  
21 quotations and must specify the relative importance of guaranteed  
22 savings, price, financial performance and stability, quality,  
23 technical ability, experience and other evaluation factors.

1       ~~3. The contract shall be awarded to the responsible offeror~~  
2 ~~whose proposal, following negotiations, is determined to be the most~~  
3 ~~advantageous to the political subdivision considering the guaranteed~~  
4 ~~savings and other evaluation factors set forth in the request for~~  
5 ~~proposals.~~

6       F. In accordance with the terms of a request for ~~proposals~~  
7 qualification under subsection E of this section and with rules  
8 promulgated by the governing board, the governing board may conduct  
9 discussions with offerors who submit proposals and who are  
10 determined to be reasonably qualified for the award of the contract.  
11 Offerors shall be treated fairly and equally with respect to any  
12 opportunity for discussion and revision of proposals. To obtain the  
13 best final offers, the governing board may allow proposal revisions  
14 after submissions and before the award of the contract.

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

19       ~~H. All proposals shall be open for public inspection after the~~  
20 ~~contract with the selected provider has been executed, but trade~~ The  
21 governing body and the offeror selected through the request for  
22 proposal procedures shall enter into a memorandum of understanding,  
23 which shall require the provider to perform preliminary analysis  
24 regarding the physical features and operating history of the

1 facilities under consideration. There shall be no financial  
2 obligation to the political subdivision for this analysis.

3 I. After completion of the preliminary analysis, the energy  
4 service provider shall perform a detailed energy performance audit  
5 on the specific buildings or facilities as agreed to by the  
6 political subdivision. This audit shall provide a cost basis for  
7 operating the existing building or facilities and the detailed  
8 information necessary to make a financial decision regarding a long-  
9 term performance-based efficiency contract. The cost of this audit  
10 may be rolled into the terms of a performance-based efficiency  
11 contract. If the political subdivision decides not to enter into a  
12 long-term performance-based efficiency contract with the provider,  
13 the political subdivision must pay the sum stipulated in the  
14 performance audit contract.

15 J. Trade secrets and proprietary information clearly identified  
16 in the proposals shall not be open for public inspection.

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



1       SECTION 3.       AMENDATORY       62 O.S. 2011, Section 318, as  
2 amended by Section 1, Chapter 267, O.S.L. 2015 (62 O.S. Supp. 2017,  
3 Section 318), is amended to read as follows:

4       Section 318. A. For purposes of this section:

5       1. "Public entity" means any political subdivision of this  
6 state, or a public trust which has as a beneficiary a political  
7 subdivision of this state, or any institution of higher education  
8 which is part of The Oklahoma State System of Higher Education;

9       2. "Performance-based efficiency contract" means a contract for  
10 the design, development, financing, installation and service of any  
11 improvement, repair, alteration or betterment of any building or  
12 facility owned, operated or planned by a public entity; or any  
13 equipment, fixture or furnishing to be added to or used in any such  
14 building or facility; or any maintenance or operational strategy  
15 that is designed and implemented that will reduce utility  
16 consumption or lower operating costs, result in annual operating  
17 cost savings, generate additional revenues or avoid capital cost  
18 incurrence and may include, but is not limited to, one or more of  
19 the following:

- 20           a. utility services,
- 21           b. heating, ventilating or air conditioning system  
22               modifications or replacements and automated control  
23               systems,
- 24           c. replacement or modifications of lighting fixtures,

- d. indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements when done in conjunction with other cost-saving measures,
- e. any additional building infrastructure improvement, cost saving, life safety or any other improvement that provides long-term operating cost reductions and is in compliance with state and local codes, ~~or~~
- f. water-metering devices that increase efficiency or accuracy of water measurement and energy reduction, or
- g. any facility operation and support programs that reduce operating cost;

3. "Qualified provider" means a person or business experienced or trained in the design, analysis and installation of energy conservation and facility management measures. A qualified provider must employ a professional engineer registered in the State of Oklahoma; and

4. "State governmental entity" means the State of Oklahoma or any agency, board, commission, authority, department, public trust of which the state is the beneficiary or other instrumentality of state government, other than a public trust with the state as beneficiary whose jurisdiction is limited to one county, including, but not limited to, the following:

- a. Oklahoma Municipal Power Authority,

- b. Oklahoma Development Finance Authority,
- c. Oklahoma Industrial Finance Authority,
- d. Grand River Dam Authority,
- e. Oklahoma Water Resources Board,
- f. Northeast Oklahoma Public Facilities Authority,
- g. Oklahoma Turnpike Authority,
- h. Oklahoma Housing Finance Authority, and
- i. Oklahoma Public, Industrial and Cultural Facilities Authority.

B. In addition to any other legally permissible alternatives of entering into contracts, any public entity may enter into performance-based efficiency contracts with a qualified provider pursuant to the provisions of this section. Further, any public entity may enter into an installment contract, lease purchase agreement or other contractual obligation for the purpose of financing performance-based efficiency projects for a term not to exceed the greater of twenty (20) years or the useful life of the project. ~~Any state governmental entity proposing to enter into an agreement under this section shall consult with the State Bond Advisor to determine the most cost-effective financing, including publicly offered or privately placed bonds, notes, or other obligations secured by the efficiency contracts. Any state governmental entity entering into a financing secured by an efficiency contract shall report the amount of outstanding leases or~~

1 ~~contracts issued under this section each year for inclusion in the~~  
2 ~~State Bond Advisor's annual report on state obligations. A~~  
3 qualified provider to whom the contract is awarded shall be required  
4 to give a sufficient bond to the public entity for its faithful  
5 performance of the contract. In addition, the public entity may  
6 require performance bonds covering the annual amount of guaranteed  
7 savings over the contract term.

8 The contract's cost savings to the public entity must be  
9 guaranteed each year during the term of the agreement. The savings  
10 must be sufficient to offset the annual costs of the contract. In  
11 calculating cost savings, the public entity may consider capital  
12 cost avoidance and include additional revenue that is directly  
13 attributed to the performance-based efficiency contract. The  
14 contract shall provide for reimbursement to the public entity  
15 annually for any shortfall of guaranteed savings. Savings must be  
16 measured, verified and documented during each year of the term and  
17 may be utilized to meet the annual debt service. This section shall  
18 constitute the sole authority necessary to enter into performance-  
19 based efficiency contracts, without regard to compliance with other  
20 laws which may specify additional procedural requirements for  
21 execution of contracts.

22 SECTION 4. AMENDATORY 70 O.S. 2011, Section 5-131.2, is  
23 amended to read as follows:  
24

1 Section 5-131.2 A. As used in this section, "energy  
2 conservation measures" means one or more of the following items:

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

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

10 3. Automatic or computerized energy control systems;

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

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

19 6. Indoor air quality improvements;

20 7. Energy recovery systems; ~~and~~

21 8. Energy awareness education programs; and

22 9. Water-metering devices that increase efficiency or accuracy  
23 of water measurement and reduce energy consumption.  
24

1       B. The board of education of any school district in compliance  
2 with the provisions of this section, may enter into an energy  
3 conservation contract for the purpose of implementing energy  
4 conservation measures designed to reduce the energy consumption of  
5 school facilities.

6       C. 1. The board of education shall require the provider of the  
7 energy conservation measures to file with the board of education a  
8 performance bond that is in an amount the board finds reasonable and  
9 necessary to protect the interests of the board and that covers the  
10 value of the guaranteed savings on the contract and is conditioned  
11 on the faithful execution of the terms of the contract.

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

- 16           a. a performance bond which covers guaranteed savings for  
17 a shorter term. At the completion of the bond term, a  
18 new bond may be executed which covers guaranteed  
19 savings for an additional period of years. This  
20 process may be continued in like manner for the  
21 duration of the lease-purchase agreement as specified  
22 by subsection D of this section, or
- 23           b. a performance bond which covers guaranteed savings for  
24 a shorter term. At the completion of the bond term, if

1 the bond cannot be renewed as provided in subparagraph  
2 a of this paragraph and if there has been a guaranteed  
3 savings shortfall during the last twelve (12) months,  
4 the board of education may assume a continued annual  
5 shortfall of the same amount and request repayment  
6 from the contractor of the net present value of the  
7 shortfall through the end of the lease repayment  
8 period. The discount factor to calculate the net  
9 present value shall be the annual percentage rate of  
10 the lease-purchase agreement.

11 D. 1. The board of education may enter into an energy  
12 conservation contract for a period of more than one (1) year for the  
13 implementation of energy conservation measures with a person or  
14 business entity if the board of education finds that the amount the  
15 school district would spend on the energy conservation measures,  
16 excluding any initial partial payment, will not exceed the total  
17 savings over the repayment period of the energy conservation  
18 contract from the date of installation.

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

22 3. If the term of an energy conservation contract exceeds one  
23 (1) year, the contractual obligation of the school district,  
24 excluding any initial partial payment, in any year during the term

1 of the energy conservation contract may not exceed the total savings  
2 including, but not limited to, electrical, gas, or other utility  
3 cost savings and savings from lowered maintenance, as determined by  
4 the board of education. Savings shall be guaranteed by the entity  
5 providing the energy conservation measures.

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

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

11 6. The board of education shall consider all costs of the  
12 energy conservation measures, including costs of design,  
13 engineering, installation, maintenance, maintenance tools and  
14 equipment, spare parts, repairs, and debt service.

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

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

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

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



1 4. Contain a nonappropriation clause; and

2 5. Contain a baseline calculation and an energy savings  
3 calculation. The calculations shall be performed in accordance with  
4 the procedures used by the International Protocol for Measurement  
5 and Verification Procedures (IPMVP) or succeeding standard of the  
6 United States Department of Energy.

7 F. 1. An energy conservation contract, with respect to  
8 existing buildings or facilities, may be funded through a lease-  
9 purchase agreement that meets federal tax requirements for tax-free  
10 municipal leasing or long-term financing.

11 2. The repayment period of the lease-purchase agreement shall  
12 not exceed the ~~lesser~~ greater of ~~fifteen (15)~~ twenty (20) years or  
13 the weighted average equipment life to be installed under the energy  
14 conservation contract.

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

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

21 ~~2. Notice of the request for proposals shall be published in~~  
22 ~~the manner provided for competitive bidding.~~ Prior to entering into  
23 an energy conservation contract, the board of education shall  
24 solicit a request for qualification from one or more energy service

1 company providers. Requests for ~~proposals~~ qualification must  
2 solicit quotations and must specify the relative importance of  
3 guaranteed savings, price, financial performance and stability,  
4 quality, technical ability, experience and other evaluation factors.

5 ~~3. The board of education shall review the proposals it~~  
6 ~~receives, and shall select at least two for more detailed~~  
7 ~~consideration. The initial screening should consider the ability of~~  
8 ~~the offeror to provide energy conservation measures as well as the~~  
9 ~~following factors:~~

- 10 a. ~~specialized experience in the type of work~~  
11 ~~contemplated,~~
- 12 b. ~~capacity to accomplish the work in the required time,~~
- 13 c. ~~past performance, and~~
- 14 d. ~~estimated savings.~~

15 ~~4. The board of education shall negotiate the contract with the~~  
16 ~~selected offeror. The negotiated scope and contract rate shall be~~  
17 ~~reported to the board of education for the approval of the award of~~  
18 ~~the contract.~~

- 19 ~~5. a. If the board of education and the first choice offeror~~  
20 ~~cannot reach an agreement, their negotiations shall be~~  
21 ~~terminated and negotiations with the second choice~~  
22 ~~offeror shall commence.~~

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

4       ~~c. Should the board of education be unable to negotiate a~~  
5       ~~satisfactory contract with any of the two selected~~  
6       ~~offerors, the board of education shall select~~  
7       ~~additional offerors in order of their competency and~~  
8       ~~qualifications and shall continue negotiations in~~  
9       ~~accordance with the provisions of this subsection~~  
10      ~~until an agreement is reached.~~

11      ~~6. The energy conservation contract and lease purchase~~  
12      ~~agreement shall be awarded to the responsible offeror whose~~  
13      ~~proposal, following negotiations, is determined to be the most~~  
14      ~~advantageous to the school district considering the guaranteed~~  
15      ~~savings and other evaluation factors set forth in the request for~~  
16      ~~proposals.~~

17      2. In order to determine the energy savings measures to be  
18      considered by proposers, the board of education may hire an  
19      independent energy consultant.

20      ~~7.~~ 3. Fees assessed by the consultant will be paid from  
21      proceeds of any financing associated with the energy conservation  
22      contract.

23      H. ~~If provided in a request for proposals under subsection G of~~  
24      ~~this section, proposals~~ Proposals shall be opened in a manner that

1 avoids disclosure of the contents to competing offerors and keeps  
2 the proposals confidential during negotiations.

3 ~~I. All proposals shall be open for public inspection after the~~  
4 ~~contract with the selected provider has been executed, but trade~~ The  
5 board of education and the offeror selected through the request for  
6 proposal procedures shall enter into a memorandum of understanding  
7 which shall require the provider to perform preliminary analysis  
8 regarding the physical features and operating history of the  
9 facilities under consideration. There shall be no financial  
10 obligation to the school district for this analysis.

11 J. After completion of the preliminary analysis, the energy  
12 service provider shall perform a detailed energy performance audit  
13 on the specific buildings or facilities as agreed to by the  
14 political subdivision. This audit shall provide a cost basis for  
15 operating the existing building or facilities and the detailed  
16 information necessary to make a financial decision regarding a long-  
17 term performance-based efficiency contract. The cost of this audit  
18 may be rolled into the terms of a performance-based efficiency  
19 contract. If the school district decides not to enter into a long-  
20 term performance-based efficiency contract with the provider, the  
21 school district must pay the sum stipulated in the performance audit  
22 contract.

23 K. Trade secrets and proprietary information clearly identified  
24 in the proposals shall not be open for public inspection.

SECTION 5. This act shall become effective November 1, 2018.

Passed the House of Representatives the 14th day of March, 2018.

Presiding Officer of the House  
of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2018.

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Presiding Officer of the Senate