

# An Act

ENROLLED HOUSE  
BILL NO. 3536

By: Caldwell of the House

and

McCortney and Pittman of  
the Senate

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

SUBJECT: Energy conservation

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:

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

11. Building operation programs that reduce the operating costs.

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

Section 458. A. The 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 facilities of the political subdivision.

B. 1. The governing board shall require the provider of the energy conservation measures to file with the governing board a performance bond that is in an amount the governing board finds reasonable and necessary to protect the interests of the 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 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:

- a. the governing board finds that the amount the political subdivision would spend on the energy conservation measures, excluding any initial partial

payment, will not exceed the total savings in energy costs over 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 political subdivision, excluding any initial partial payment, in any year during the term of the energy conservation contract may not exceed the total savings, including, but not limited to, electrical, gas, or other utility cost savings and savings from lowered maintenance as determined by the governing board.

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

5. The 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 repayment period of the lease-purchase agreement shall not exceed the ~~lesser~~ greater of ~~fifteen (15)~~ twenty (20) 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 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. Prior to entering into an energy conservation contract, the governing board shall solicit a request for qualification from one or more energy service company providers. Requests for proposals qualification 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 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~~ qualification under subsection E of this section and with rules promulgated by the governing board, the 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 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~~ Proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals confidential during negotiations.

H. ~~All proposals shall be open for public inspection after the contract with the selected provider has been executed, but trade~~ The governing body and the offeror selected through the request for qualification procedures shall enter into a memorandum of understanding, which shall require the provider to perform preliminary analysis regarding the physical features and operating history of the facilities under consideration. There shall be no financial obligation to the political subdivision for this analysis.

I. After completion of the preliminary analysis, the energy service provider shall perform a detailed energy performance audit on the specific buildings or facilities as agreed to by the political subdivision. This audit shall provide a cost basis for operating the existing building or facilities and the detailed information necessary to make a financial decision regarding a long-

term performance-based efficiency contract. The cost of this audit may be rolled into the terms of a performance-based efficiency contract. If the political subdivision decides not to enter into a long-term performance-based efficiency contract with the provider, the political subdivision must pay the sum stipulated in the performance audit contract.

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

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

Section 318. A. For purposes of this section:

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

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

- a. utility services,
- b. heating, ventilating or air conditioning system modifications or replacements and automated control systems,

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

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

SECTION 4. AMENDATORY 70 O.S. 2011, 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;
7. Energy recovery systems; ~~and~~
8. Energy awareness education programs; and
9. Water-metering devices that increase efficiency or accuracy of water measurement and reduce energy consumption.

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. 1. The board of education shall require the provider of the energy conservation measures to file with the board of education a 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 total savings over the 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 savings including, but not limited to, electrical, gas, or other utility cost savings and savings from lowered maintenance, as determined by the board of education. 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 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 repayment period of the lease-purchase agreement shall not exceed the ~~lesser~~ greater of ~~fifteen (15)~~ twenty (20) years or the weighted average equipment life of any equipment 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 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. Prior to entering into an energy conservation contract, the board of education shall solicit a request for qualification from one or more energy service company providers. Requests for proposals qualification 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:~~

- ~~a. specialized experience in the type of work contemplated,~~
- ~~b. capacity to accomplish the work in the required time,~~
- ~~c. past performance, and~~
- ~~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.~~

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

~~7.~~ 3. 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 C of this section, proposals~~ Proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals confidential during negotiations.

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

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

K. Trade secrets and proprietary information clearly identified 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 3rd day of May, 2018.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 5th day of April, 2018.

\_\_\_\_\_  
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_