

## FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3536

			Of the printed Bill
Page	<u>3</u>	Section	<u>2</u>
		Lines	<u>10</u>
			Of the Engrossed Bill

By deleting sections two and four inserting new sections two and four to read as follows:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Amendment submitted by: Chad Caldwell

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

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

3 Section 458. A. The governing board of a political subdivision  
4 of this state, in compliance with the provisions of this section,  
5 may enter into an energy conservation contract for the purpose of  
6 implementing energy conservation measures designed to reduce the  
7 energy consumption of facilities of the political subdivision.

8 B. 1. The governing board shall require the provider of the  
9 energy conservation measures to file with the governing board a  
10 performance bond that is in an amount the governing board finds  
11 reasonable and necessary to protect the interests of the political  
12 subdivision and that covers the value of the guaranteed savings on  
13 the contract and is conditioned on the faithful execution of the  
14 terms of the contract.

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

- 19 a. a performance bond which covers guaranteed savings for  
20 a shorter bond term. At the completion of the bond  
21 term, a new bond may be executed which covers  
22 guaranteed savings for an additional period of years.  
23 This process may be continued in like manner for the  
24

1 duration of the lease-purchase agreement as specified  
2 in subsection D of this section, or

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

15 C. 1. The governing board may enter into an energy  
16 conservation contract for a period of more than one (1) year for the  
17 implementation of energy conservation measures with a person or  
18 business entity if:

- 19 a. the governing board finds that the amount the  
20 political subdivision would spend on the energy  
21 conservation measures, excluding any initial partial  
22 payment, will not exceed the total savings in energy  
23 costs over the repayment period from the date of  
24 installation, and

1           b.    the contract contains a provision that such contract  
2                will continue for the next fiscal year of the  
3                political subdivision only if the governing board  
4                appropriates adequate and sufficient funds for the  
5                contract for the next fiscal year.

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

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

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

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

22           D.    1.   An energy conservation contract, with respect to  
23                existing buildings or facilities, may be funded through a lease-

1 purchase agreement that meets federal tax requirements for tax-free  
2 municipal leasing or long-term financing.

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

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

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

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

23 F. In accordance with the terms of a request for ~~proposals~~  
24 qualification under subsection E of this section and with rules

1 promulgated by the governing board, the governing board may conduct  
2 discussions with offerors who submit proposals and who are  
3 determined to be reasonably qualified for the award of the contract.  
4 Offerors shall be treated fairly and equally with respect to any  
5 opportunity for discussion and revision of proposals. To obtain the  
6 best final offers, the governing board may allow proposal revisions  
7 after submissions and before the award of the contract.

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

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

20 I. After completion of the preliminary analysis, the energy  
21 service provider shall perform a detailed energy performance audit  
22 on the specific buildings or facilities as agreed to by the  
23 political subdivision. This audit shall provide a cost basis for  
24 operating the existing building or facilities and the detailed

1 information necessary to make a financial decision regarding a long-  
2 term performance-based efficiency contract. The cost of this audit  
3 may be rolled into the terms of a performance-based efficiency  
4 contract. If the political subdivision decides not to enter into a  
5 long-term performance-based efficiency contract with the provider,  
6 the political subdivision must pay the sum stipulated in the  
7 performance audit contract.

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

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

16 SECTION 1. AMENDATORY 70 O.S. 2011, Section 5-131.2, is  
17 amended to read as follows:

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

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

22 2. Storm windows or doors, caulking or weather-stripping,  
23 multiglazed windows or doors, heat-absorbing or heat-reflective,  
24 glazed, and coated window or door systems, additional glazing,

1 reductions in glass area, or other window and door system  
2 modifications that reduce energy consumption;

3 3. Automatic or computerized energy control systems;

4 4. Heating, ventilating or air conditioning system

5 modifications or replacements;

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

12 6. Indoor air quality improvements;

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

14 8. Energy awareness education programs; and

15 9. Water-metering devices that increase efficiency or accuracy  
16 of water measurement and reduce energy consumption.

17 B. The board of education of any school district in compliance  
18 with the provisions of this section, may enter into an energy  
19 conservation contract for the purpose of implementing energy  
20 conservation measures designed to reduce the energy consumption of  
21 school facilities.

22 C. 1. The board of education shall require the provider of the  
23 energy conservation measures to file with the board of education a  
24 performance bond that is in an amount the board finds reasonable and



1 necessary to protect the interests of the board and that covers the  
2 value of the guaranteed savings on the contract and is conditioned  
3 on the faithful execution of the terms of the contract.

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

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

15 b. a performance bond which covers guaranteed savings for  
16 a shorter term. At the completion of the bond term, if  
17 the bond cannot be renewed as provided in subparagraph  
18 a of this paragraph and if there has been a guaranteed  
19 savings shortfall during the last twelve (12) months,  
20 the board of education may assume a continued annual  
21 shortfall of the same amount and request repayment  
22 from the contractor of the net present value of the  
23 shortfall through the end of the lease repayment  
24 period. The discount factor to calculate the net

1 present value shall be the annual percentage rate of  
2 the lease-purchase agreement.

3 D. 1. The board of education may enter into an energy  
4 conservation contract for a period of more than one (1) year for the  
5 implementation of energy conservation measures with a person or  
6 business entity if the board of education finds that the amount the  
7 school district would spend on the energy conservation measures,  
8 excluding any initial partial payment, will not exceed the total  
9 savings over the repayment period of the energy conservation  
10 contract from the date of installation.

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

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

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

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

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

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

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

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

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

17          4. Contain a nonappropriation clause; and

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

23        F. 1. An energy conservation contract, with respect to  
24 existing buildings or facilities, may be funded through a lease-

1 purchase agreement that meets federal tax requirements for tax-free  
2 municipal leasing or long-term financing.

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

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

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

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

21 ~~3. The board of education shall review the proposals it~~  
22 ~~receives, and shall select at least two for more detailed~~  
23 ~~consideration. The initial screening should consider the ability of~~  
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~~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~~

1 ~~accordance with the provisions of this subsection~~  
2 ~~until an agreement is reached.~~

3 ~~6. The energy conservation contract and lease purchase~~  
4 ~~agreement shall be awarded to the responsible offeror whose~~  
5 ~~proposal, following negotiations, is determined to be the most~~  
6 ~~advantageous to the school district considering the guaranteed~~  
7 ~~savings and other evaluation factors set forth in the request for~~  
8 ~~proposals.~~

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

12 ~~7.~~ 3. Fees assessed by the consultant will be paid from  
13 proceeds of any financing associated with the energy conservation  
14 contract.

15 H. ~~If provided in a request for proposals under subsection G 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 I. ~~All proposals shall be open for public inspection after the~~  
20 ~~contract with the selected provider has been executed, but trade~~ The  
21 board of education 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 school district for this analysis.

3 J. 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 school district decides not to enter into a long-  
12 term performance-based efficiency contract with the provider, the  
13 school district must pay the sum stipulated in the performance audit  
14 contract.

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

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